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United Nations

Report of the Committee against Torture

Fifty-first session
(28 October–22 November 2013)
Fifty-second session
(28 April–23 May 2014)

General Assembly
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Sixty-ninth session
Supplement No. 44 (A/69/44)

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Note

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I. Organizational and other matters

A. States parties to the Convention

1. As at 23 May 2014, the closing date of the fifty-second session of the Committee against Torture (hereinafter referred to as "the Committee"), there were 155 States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Convention"). The Convention was adopted by the General Assembly in resolution 39/46 of 10 December 1984 and entered into force on 26 June 1987.

2. The list of States which have signed, ratified or acceded to the Convention is contained in annex I to the present report. The list of States parties that have declared that they do not recognize the competence of the Committee provided for by article 20 of the Convention is provided in annex II. The States parties that have made the declarations provided for in articles 21 and 22 of the Convention are listed in annex III.

3. The text of the declarations, reservations or objections made by States parties with respect to the Convention may be found on the United Nations website (http://treaties.un.org).

B. Sessions of the Committee

4. The Committee against Torture has held two sessions since the adoption of its previous annual report. The fifty-first session (1170th to 1209th meetings) was held at the United Nations Office at Geneva from 28 October to 22 November 2013, and the fifty-second session (1210th to 1249th meetings) was held from 28 April to 23 May 2014. An account of the deliberations of the Committee at those two sessions is contained in the relevant summary records (CAT/C/SR.1170–1249).

C. Membership and attendance at sessions

5. The fourteenth Meeting of the States Parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which took place in Geneva on 1 October 2013, held elections to replace five members whose term of office expired on 31 December 2013. The list of members with their term of office appears in annex IV to the present report.

6. Bhogendra Sharma, who was elected on 1 October 2013, resigned. Mr. Sharma's resignation was transmitted to the Committee by Nepal on 6 February 2014. Further to this resignation, Nepal appointed, on 28 March, Sapana Pradhan-Malla to replace Mr. Sharma for the remainder of his term, which is due to expire on 31 December 2017. In accordance with the provisions of article 17, paragraph 6, of the Convention and rule 13, paragraph 2, of the Committees' rules of procedure, Ms. Pradhan-Malla's appointment as a member of the Committee was considered approved as no States parties responded negatively within six weeks of her appointment.

D. Solemn declaration by the newly elected members

7. At the Committee's 1210th meeting, on 28 April 2014, Jens Modvig and Kening Zhang made the solemn declaration upon assuming their duties, in accordance with rule 14 of the revised rules of procedure (CAT/C/3/Rev.6).

8. At the 1232nd meeting, on 13 May 2014, Ms. Pradhan-Malla, who replaced Mr. Sharma, made the solemn declaration upon assuming her duties, in accordance with rule 14 of the rules of procedure.

E. Election of officers

9. At the fifty-second session, on 28 April 2014, the Committee elected Claudio Grossman as Chairperson, Essadia Belmir, Felice Gaer and George Tugushi as Vice-Chairpersons and Satyabhooshun Gupt Domah as Rapporteur.

10. At the same session, on 23 May 2014, the Committee designated:

(a) Mr. Modvig as Rapporteur for follow-up to concluding observations under article 19 of the Convention, pursuant to rule 72 of the rules of procedure;

(b) Mr. Domah as Rapporteur on new complaints and interim measures, pursuant to rule 104 of the rules of procedure;

(c) Mr. Domah as Rapporteur for follow-up on decisions adopted under article 22 of the Convention, pursuant to rule 120 of the rules of procedure;

(d) Mr. Tugushi as rapporteur on reprisals under article 19 (redesignated);

(e) Alessio Bruni as rapporteur on reprisals under articles 20 and 22.

F. Agendas

11. At its 1170th meeting, on 28 October 2013, the Committee adopted the items listed in the provisional agenda submitted by the Secretary-General (CAT/C/51/1) as the agenda of its fifty-first session.

12. At its 1210th meeting, on 28 April 2014, the Committee adopted the items listed in the provisional agenda submitted by the Secretary-General (CAT/C/52/1) as the agenda of its fifty-second session.

G. Participation of Committee members in other meetings

13. During the period under consideration, Committee members participated in various meetings organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR):

(a) The international expert conference entitled "Vienna+20: Advancing the Protection of Human Rights: Achievements, Challenges and Perspectives 20 Years after the World Conference", held in Vienna on 27 and 28 June 2013, on the occasion of the twentieth anniversary of the World Conference on Human Rights, was attended by Mr. Grossman (Chairperson);

(b) A side event of the sixty-eighth session of the General Assembly, entitled "Reviewing the Standard Minimum Rules for the Treatment of Prisoners (SMR) –

Preventing Torture and Ill-Treatment?", held in New York on 22 October 2013, was attended by Mr. Grossman (Chairperson);

(c) The seminar entitled "La methodologie d'élaboration des rapports sur les droits de l'homme: experiences et bonnes pratiques", held in Rabat on 28 February and 1 March 2014, was attended by Ms. Belmir (Vice-Chairperson).

14. In the context of the treaty body strengthening process:

(a) Mr. Grossman participated in the open dialogue on the outcome of the treaty body strengthening process, held in Geneva on 9 May 2014, with a presentation entitled "Human Rights Treaty Bodies: Where to from Here?";

(b) Mr. Grossman participated in the informal consultations of the 10 Chairs of the human rights treaty bodies on the impact of the intergovernmental process on treaty body strengthening, held at American University Washington College of Law, in Washington, D.C., on 31 January and 1 February 2014.

H. Oral report of the Chairperson to the General Assembly

15. Further to the invitation to the Chairperson of the Committee to present an oral report on the work of the Committee and to engage in an interactive dialogue with the General Assembly at its sixty-eighth session under the sub-item entitled "Implementation of human rights instruments" (General Assembly resolution 67/161, para. 30), the Chairperson of the Committee presented an oral report to the General Assembly at its sixty-eighth session on 22 October 2013. The oral report may be found on the OHCHR website (www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13922&LangID=E).

I. Activities of the Committee in connection with the Optional Protocol to the Convention

16. As at 23 May 2014, there were 72 States parties to the Optional Protocol (see annex V). As required by the Optional Protocol to the Convention, on 13 November 2013, a joint meeting was held between the members of the Committee and the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter "the Subcommittee on Prevention"). Both the Committee and the Subcommittee on Prevention (the membership of the Subcommittee on Prevention is included in annex VI) further discussed the strengthening of the modalities for cooperation, such as the mutual sharing of information, taking into account confidentiality requirements.

17. A further meeting was held between the Committee and the Chairperson of the Subcommittee on Prevention on 9 May 2014, at which the latter submitted to the Committee the seventh public annual report of the Subcommittee (CAT/C/52/2). The Committee decided to include it in the present annual report (see annex VII) and to transmit it to the General Assembly.

J. Joint statement on the occasion of the United Nations International Day in Support of Victims of Torture

18. A joint statement with the Subcommittee on Prevention, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture was adopted for issuance on 26 June 2014, the United Nations International Day in Support of Victims of Torture (see annex VIII to the present report).

K. Informal meeting with the States parties to the Convention

19. At its fifty-second session, on 29 April 2014, the Committee held an informal meeting with States parties to the Convention, which was attended by representatives of 22 States parties. The Committee and the States parties discussed the following issues: the procedure relating to lists of issues prior to reporting; the new initiative for the universal ratification and implementation of the Convention, launched by Chile, Denmark, Ghana, Indonesia, Morocco and Togo in association with the Association for the Prevention of Torture; the relationship between the universal periodic review and the examination of reports by treaty bodies; follow-up to the recommendations of the Committee; the dialogue between State parties and the Committee; national preventive mechanisms and how they operate; the issue of reprisals; the delays in presenting periodic reports by State parties; and the implementation of concluding observations.

L. Participation of non-governmental organizations

20. At its fifty-second session, on 2 May 2014, the Committee held an informal meeting with representatives of 11 non-governmental organizations (NGOs) that provide information to the Committee, and discussed the following issues: how, in practice, the Committee may provide assistance in cases of reprisal; the need to revise the format of the dialogue to ensure a more interactive exchange; the new initiative for the universal ratification and implementation of the Convention launched by Chile, Denmark, Ghana, Indonesia, Morocco and Togo in association with the Association for the Prevention of Torture; the use of indicators in the context of identifying the difficulties in ratifying and implementing the Convention; the need for the Committee to undertake a new general comment; the format of NGO briefings to the Committee; the consideration of States parties in the absence of a report; the urgent need to revise general comment No. 1 (1997) on the implementation of article 3 of the Convention, as it is seriously outdated; the treaty body strengthening process and the implementation of General Assembly resolution 68/268 on strengthening and enhancing the effective functioning of the human rights treaty body system; the participation of the Committee in the revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners; the thirtieth anniversary of the Convention; the absence of cooperation of some States parties with the Committee and the failure of some States parties to comply with their reporting obligations; the delay between the adoption of the list of issues prior to reporting and the submission by States parties of their report; the need to follow up on the confidential inquiry procedure; and the timely consideration of individual communications.

21. The Committee has long recognized the work of NGOs and has met with them in private, with interpretation, on the day immediately before the consideration of each State party report under article 19 of the Convention. The Committee expresses its appreciation to the NGOs for their participation in these meetings, and is particularly appreciative of the attendance of national NGOs which provide immediate and direct information.

M. Participation of national human rights institutions

22. Similarly, the Committee has long recognized the work of national human rights institutions (NHRIs); country rapporteurs, together with any other Committee member wishing to attend, have met with the representatives of the NHRIs, if requested, before the consideration of each State party report under article 19 of the Convention. The Committee expresses its appreciation to the NHRIs for the information it receives from those

institutions, and looks forward to continuing to benefit from the information it derives from those bodies, which has enhanced its understanding of the issues before the Committee.

N. Reporting guidelines

23. At its fifty-first and fifty-second sessions, the Committee, due to its very heavy workload, had no time to continue to discuss the revision of its reporting guidelines in the light of the optional reporting procedure (lists of issues prior to reporting). In order to have time to discuss its working methods, including its reporting guidelines, the Committee decided to hold a two-day retreat at its November session.

O. Examination of reports

24. In the light of General Assembly resolution 67/232 authorizing it to continue to meet for an additional week per session as a temporary measure, the Committee decided, at its fifty-second session, to, at its fifty-third session, examine eight reports of States parties, as well as hold a two-day retreat to discuss the working methods of the Committee and host a celebration marking the thirtieth anniversary of the Convention.

P. Rapporteurs on reprisals

25. At its fifty-first session, the Committee, further to the establishment of a mechanism to prevent, monitor and follow up cases of reprisal against civil society organizations, human rights defenders, victims and witnesses after their engagement with the treaty body system, and the designation of Mr. Tugushi as the rapporteur on reprisals under article 19 and Mr. Bruni as the rapporteur on reprisals under article 22, decided to designate the latter also as the rapporteur on reprisals under article 20 (see para. 10 above). Guidelines for the execution of the mandates of the rapporteurs will be discussed and adopted in future sessions.

Q. Statements

Statement on membership

26. At its fifty-first session, on 4 November 2013, the Committee adopted a statement in which it recalled that it was a treaty body of the United Nations established under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and that it consisted of 10 experts of high moral standing and recognized competence in the field of human rights, who should serve in their personal capacity. The statement also reflected the Committee's unanimous decision that financial misconduct was incompatible with serving on the Committee (see annex IX). All statements of the Committee are available on the webpage from: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=1&DocTypeID=68.

Statement on reprisals

27. At its fifty-first session, the Committee also adopted a statement on reprisals. In the statement, the Committee reaffirmed the vital role of individuals, groups and institutions that provided information to the Committee, and its appreciation to all those who were committed to the effective functioning of the Committee and the implementation of the entire Convention; it recalled that individuals who alleged torture had the right to complain (art. 13) and that States parties should take steps to ensure that the complainant and

witnesses were protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given; it indicated that, where reprisals had been initiated against non-governmental organizations or individuals for their cooperation and/or participation in the Committee's work, the rapporteurs would communicate with the complainants, authorities in the relevant State party, OHCHR and the Secretary-General to request the immediate cessation of such acts.

28. In such cases, the Committee may ask the rapporteurs or other members to visit the States parties and places where the reprisals occurred, and request local institutions, non-governmental organizations and country-based representatives of OHCHR to carry out such visits; it may also request the further intervention of other relevant United Nations bodies and officials, including the United Nations High Commissioner for Human Rights. In case of reprisals, those wishing to communicate with the Committee on the matter can contact the rapporteurs at cat@ohchr.org (see annex X to the present report).

R. Treaty body strengthening process

29. At its fifty-second session, the Committee discussed the simplified reporting procedure (see para. 38 below) in the context of General Assembly resolution 68/268 on strengthening and enhancing the effective functioning of the human rights treaty body system. In that regard, the Committee agreed to endorse some of the suggested elements contained in the note by the secretariat on the simplified reporting procedure prepared for the twenty-sixth meeting of chairpersons of the human rights treaty bodies (HRI/MC/2014/4), namely, those on generalizing the simplified reporting procedure (para. 52) and on limiting the simplified reporting procedure to periodic reports (para. 53). The Committee also decided to endorse some of the other suggested elements contained in that note by the secretariat and in two other documents prepared by the secretariat (HRI/MC/2014/2 and HRI/MC/2014/3), subject to the principles of flexibility, constant evaluation and specificity. Further discussion will be held on those matters during the Committee's retreat on working methods, to take place at the fifty-third session.

S. Rules of procedure

30. At its fifty-second session, the Committee took a formal decision reiterating that, in the light of their importance and their brevity, the Guidelines on the independence and impartiality of members of the human rights treaty bodies (the Addis Ababa guidelines) should be annexed to the Committee's rules of procedure in a single document as requested following the amendment of the rules of procedure at its fiftieth session, in May 2013, and stating that failing the inclusion of the annex, a footnote should be added to the rules of procedure explaining the reasons why the guidelines were not annexed.

T. Thirtieth anniversary of the Convention

31. At its fifty-second session, the Committee decided to hold a half-day celebration of the thirtieth anniversary of the Convention, during its next November session, which will be associated to the recent initiative for the universal ratification and implementation of the Convention.

U. Retreat on the working methods of the Committee

32. At its fifty-second session, the Committee also decided to hold a two-day retreat, at its fifty-third session, in November, to discuss its working methods. An informal paper was circulated by the secretariat identifying the main topics to be discussed, divided in clusters:

(a) Consideration of reports under article 19, including traditional reports, the simplified reporting procedure (lists of issues prior to reporting) and reporting guidelines; preparation for the dialogue, including the format of the dialogue and guidelines; and concluding observations, including follow-up and guidelines and the implementation of concluding observations; and the selection of rapporteurs and reports;

(b) Confidential inquiries under article 20, including methodological and procedural issues, follow-up and guidelines;

(c) Individual communications under article 22, including rapporteurs, interim measures, follow-up and guidelines;

(d) General comments, including the methodology for the selection of topics and drafting, rapporteurs, consultation and guidelines;

(e) Other matters, including reprisals, the annual report of the Committee to the General Assembly, external activities, cooperation with other entities, and the Committee's website.

II. Submission of reports by States parties under article 19 of the Convention

33. During the period covered by the present report, 15 reports from States parties under article 19 of the Convention were submitted to the Secretary-General. An initial report was submitted by the Congo. Second periodic reports were submitted by Romania and Serbia. Third periodic reports were submitted by Kazakhstan, Slovakia and the former Yugoslav Republic of Macedonia. A combined third to fifth periodic report was submitted by the United States of America. A combined fourth and fifth periodic report was submitted by Australia. Fifth periodic reports were submitted by China, including Hong Kong, China and Macao, China, and by Colombia. Sixth periodic reports were submitted by New Zealand and Spain. A combined sixth and seventh periodic report was submitted by Luxembourg.

34. As at 23 May 2014, the Committee had received a total of 364 reports and had examined 343 (Guinea was examined in the absence of a report); there were 27 States parties with overdue initial reports and 44 States parties with overdue periodic reports (see annex XI on the status of reports).

A. Invitation to submit periodic reports

35. Further to its decision taken at its forty-first session,[1] the Committee continued, at its fifty-first and fifty-second sessions, to invite States parties, in the last paragraph of the concluding observations, to submit their next periodic reports within a four-year period from the adoption of the concluding observations, and to indicate the due date of the next report in the same paragraph.

36. In addition, further to its decision taken at its forty-seventh session,[2] the Committee continued, at its fifty-first and fifty-second sessions, to invite States parties to accept, within one year from the adoption of their concluding observations, to report under the optional reporting procedure, or, if a State party has already accepted to report under the procedure, to indicate that the Committee will submit to the State party, in due course, a list of issues prior to the submission of its next periodic report.

B. Optional reporting procedure/simplified reporting procedure

37. The Committee welcomes the fact that a high number of States parties have accepted the optional reporting procedure, which consists of the preparation and adoption of a list of issues to be transmitted to States parties prior to the submission of a State party's periodic report (known as the list of issues prior to reporting). The procedure is aimed at assisting States parties to fulfil their reporting obligations, as it strengthens the cooperation between the Committee and States parties.[3] While the Committee understands that, since 2007, the adoption of lists of issues prior to reporting has facilitated the States parties' reporting obligations, it nonetheless wishes to emphasize that the procedure of drafting lists of issues prior to reporting has increased its workload substantially, as their preparation requires

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[1] *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 44* (A/64/44), para. 26.

[2] Ibid., *Sixty-seventh Session, Supplement No. 44* (A/67/44), para. 33.

[3] Ibid., *Sixty-sixth Session, Supplement No. 44* (A/66/44), paras. 28–35.

more work than the traditional lists of issues following the submission of a State party's report. This is particularly significant in a Committee with such a small membership.

38. Further to its previous decision to continue with this procedure for a new four-year reporting cycle,[4] the Committee decided, at its fifty-second session, to refer to this procedure as the simplified reporting procedure (lists of issues prior to reporting) and to continue to invite States parties to report under this procedure for their next periodic report. The Committee also sent reminders to States parties to submit their next periodic report under this procedure, in cases where the previous invitation had not been responded to.

39. At its fifty-first session, the Committee adopted lists of issues prior to reporting with regard to the States parties that had accepted the invitation to submit their next report, due in 2015, under this procedure: Belarus, Germany and Ireland. Those lists of issues prior to reporting were transmitted to the respective State parties.

40. At its fifty-second session, the Committee adopted lists of issues prior to reporting with regard to States parties that accepted the invitation to submit their next report, due in 2016, under this procedure: Canada, the Czech Republic, Greece, Mexico, Norway, Peru and the Russian Federation. The lists of issues prior to reporting were submitted to the respective State parties. Between the end of the fifty-first session and the end of the period under review, Armenia, Cameroon, Gabon, Qatar, Senegal and Togo accepted to report under the simplified reporting procedure.

C. Preliminary evaluation of the optional reporting procedure/simplified reporting procedure

41. At its fifty-first and fifty-second sessions, the Committee discussed its optional reporting procedure on the basis of the report it requested the secretariat to prepare[5] on the status of the optional reporting procedure (CAT/C/47/2), which included information on new developments relating to the procedure and possible options for its revision. The Committee also had before it the note by the secretariat on the simplified reporting procedure (HRI/MC/2014/4) issued following the adoption by the General Assembly of resolution 68/268.

42. At its fifty-second session, the Committee decided that further evaluation would be conducted during its two-day retreat, which would take place at its next session. However, the fact that only 5 of the 125 States parties that are at the periodic reporting stage declined to report under it indicates the success of this procedure; 85 have expressly accepted to report under it and the remaining 35 have not yet answered or have not yet been invited to report under it. In addition, the fact that other treaty bodies have also adopted, or are considering adopting, this procedure indicates its clear added value for the reporting system.

43. The updated information relating to the procedure is available from a dedicated webpage (www.ohchr.org/EN/HRBodies/CAT/Pages/ReportingProcedures.aspx).

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[4] Ibid., para. 36.

[5] Ibid., para. 38.

D. Reminders for overdue initial and periodic reports

44. At its fifty-second session, the Committee decided to send reminders to all States parties whose initial reports were overdue and to all States parties whose periodic reports were four or more years overdue.

45. The Committee drew the attention of those States parties to the fact that delays in reporting seriously hamper the implementation of the Convention in the States parties and the Committee in carrying out its function of monitoring such implementation. The Committee requested information on the progress made by those States parties regarding the fulfilment of their reporting obligations and on any obstacles that they might be facing in that respect. It also informed them that, according to rule 67 of its rules of procedure, the Committee might proceed with a review of the implementation of the Convention in the State party in the absence of a report, and that such review would be carried out on the basis of information that is available to the Committee, including sources from outside the United Nations.

E. Examination of measures taken by a State party in the absence of a report

46. Considering the positive result of the cooperation with Guinea, which resulted in the submission of a report, a dialogue with a delegation for the examination of measures taken by the State party and the adoption, at its fifty-second session, of concluding observations on the State party, the Committee decided, also at its fifty-second session, to take action with regard to States parties whose initial reports were long overdue. Noting that the initial reports of Cabo Verde and Seychelles had been overdue since 1993 — at more than 20 years, currently the most overdue of all initial reports —, the Committee decided to send a specific reminder to those States parties to submit their initial reports before the fifty-fourth session of the Committee. If the reports are not received by that date, pursuant to article 67 of its rules of procedure, the Committee will conduct at its fifty-fifth session an examination, in the absence of a report, of the measures taken by each of those States parties to implement the provisions of the Convention in its territory.

III. Consideration of reports submitted by States parties under article 19 of the Convention

A. Examination of reports submitted by States parties

47. At its fifty-first and fifty-second sessions, the Committee considered reports submitted by 16 States parties, under article 19, paragraph 1, of the Convention; proceeded to an examination, in the absence of a report, of the measures taken by Guinea to implement the provisions of the Convention in its territory; and adopted 17 sets of concluding observations. The following reports were before the Committee at its fifty-first session and it adopted the respective concluding observations:

State party	*Report*		*Concluding observations*
Andorra	Initial report	CAT/C/AND/1	CAT/C/AND/CO/1
Belgium	Third periodic report	CAT/C/BEL/3	CAT/C/BEL/CO/3
Burkina Faso	Initial report	CAT/C/BFA/1	CAT/C/BFA/CO/1
Kyrgyzstan	Second periodic report	CAT/C/KGZ/2	CAT/C/KGZ/CO/2
Latvia	Combined third to fifth periodic reports	CAT/C/LVA/3-5	CAT/C/LVA/CO/3-5 and Corr.1
Mozambique	Initial report	CAT/C/MOZ/1	CAT/C/MOZ/CO/1
Poland	Combined fifth and sixth periodic reports	CAT/C/POL/5-6	CAT/C/POL/CO/5-6
Portugal	Combined fifth and sixth periodic reports	CAT/C/PRT/5-6	CAT/C/PRT/CO/5-6
Uzbekistan	Fourth periodic report	CAT/C/UZB/4	CAT/C/UZB/CO/4

48. The following reports were before the Committee at its fifty-second session, and it adopted the following concluding observations:

State party	*Report*		*Concluding observations*
Cyprus	Fourth periodic report	CAT/C/CYP/4	CAT/C/CYP/CO/4
Guinea	Initial report (in the absence of a report)	CAT/C/GIN/1	CAT/C/GIN/CO/1
Holy See	Initial report	CAT/C/VAT/1	CAT/C/VAT/CO/1
Lithuania	Third periodic report	CAT/C/LTU/3	CAT/C/LTU/CO/3
Montenegro	Second periodic report	CAT/C/MNE/2	CAT/C/MNE/CO/2
Sierra Leone	Initial report	CAT/C/SLE/1	CAT/C/SLE/CO/1
Thailand	Initial report	CAT/C/THA/1	CAT/C/THA/CO/1
Uruguay	Third periodic report	CAT/C/URY/3	CAT/C/URY/CO/3

49. In accordance with rule 68 of the rules of procedure of the Committee, representatives of each reporting State were invited to attend the meetings of the Committee when their report was examined. All of the States parties whose reports were considered sent representatives to participate in the examination of their respective reports. The Committee expressed its appreciation for this in its concluding observations.

50. Two country rapporteurs were designated by the Committee for each of the reports considered. The list appears in annex XII to the present report.

51. In connection with its consideration of reports, the Committee also had before it:

(a) General guidelines regarding the form and contents of initial reports to be submitted by States parties under article 19, paragraph 1, of the Convention (CAT/C/4/Rev.3);

(b) General guidelines regarding the form and contents of periodic reports to be submitted by States parties under article 19 of the Convention (CAT/C/14/Rev.1).

52. The Committee has been issuing lists of issues for periodic reports since 2004. This resulted from a request made to the Committee by representatives of the States parties at a meeting with Committee members. While the Committee understands the wish of States parties to have advance notice of the issues likely to be discussed during the dialogue, it nonetheless must point out that the drafting of lists of issues has increased the Committee's workload. This is particularly significant in a Committee with such a small membership.

B. Concluding observations on States parties' reports

53. The text of concluding observations adopted by the Committee with respect to the above-mentioned reports submitted by States parties is reproduced below.

54. Andorra

(1) The Committee against Torture considered the initial report of Andorra (CAT/C/AND/1) at its 1190th and 1193rd meetings, held on 11 and 12 November 2013 (CAT/C/SR.1190 and CAT/C/SR.1193), and adopted the following concluding observations at its 1206th meeting (CAT/C/SR.1206) held on 21 November 2013.

A. Introduction

(2) The Committee welcomes the initial report of Andorra (CAT/C/AND/1), which follows the Committee's guidelines on the form and content of initial reports (CAT/C/4/Rev.3). However, it regrets that the report was submitted five years late.

(3) The Committee also appreciates the open and constructive dialogue with the high-level multisectoral delegation of the State party and the detailed supplementary information provided.

B. Positive aspects

(4) The Committee welcomes the fact that, since its ratification of the Convention in 2006, the State party has ratified or acceded to the following international instruments:

(a) United Nations Convention against Transnational Organized Crime, on 22 September 2011;

(b) Council of Europe Convention on Action against Trafficking in Human Beings, which entered into force on 1 July 2011.

(5) The Committee also welcomes the efforts of the State party to give effect to the Convention, such as giving precedence to all international treaties and agreements over

national legislation and their direct application in domestic law as soon as they are published in the *Official Gazette*, in keeping with article 3.4 of the Constitution.

C. Principal subjects of concern and recommendations

Definition of torture

(6) The Committee is concerned that the State party has not changed the definition of torture in article 110 of the Criminal Code, which does not reflect all of the elements contained in article 1 of the Convention, such as the purpose of acts of torture, punishment of a person or a third person for suspected crimes, coercion, discrimination, complicity or participation in torture and mention of instigation by, or consent of, a person acting in an official capacity (arts. 1 and 4).

While noting that international treaties prevail over domestic law in Andorra, the Committee recommends that the State party amend article 110 of the Criminal Code to include a definition of torture in conformity with the Convention which covers all the elements contained in its article 1, including the purpose for acts of torture, punishment of a person or a third person for suspected crimes, coercion, discrimination, complicity or participation in torture, and mention of instigation by, or consent of, a person acting in an official capacity.

Punishment for acts of torture and statute of limitations

(7) The Committee notes that notwithstanding the fact that torture is considered a crime against humanity in the Criminal Code, article 110 of the Criminal Code envisages a maximum sentence of imprisonment of only six years for acts of torture, with a possible increase of the sentence by up to half of the maximum penalty. It is also concerned that the crime of torture is subject to a statute of limitations of 10 years for prosecution and 15 years for punishment, which may result in impunity for perpetrators of acts of torture (arts. 2 and 4).

The State party should amend its Criminal Code with a view to introducing appropriate penalties for acts of torture and genocide beyond 10 years of imprisonment and ensure that the prosecution and punishment of the crime of torture is not subject to a statute of limitations, so that acts of torture can be investigated, prosecuted and punished without risk of impunity.

Fundamental legal safeguards

(8) The Committee notes that, according to the information before it, there have been no complaints concerning torture. With regard to measures to guarantee the fundamental rights of persons deprived of their liberty, the Committee is concerned that in certain cases persons deprived of their liberty do not have access to a doctor of their choice, even at their own expense, from the very outset of their deprivation of liberty (arts. 2 and 16).

The State party should guarantee that all persons deprived of their liberty have the right to receive a medical examination by an independent doctor, if possible a doctor of their choice, from the outset of their deprivation of liberty.

Pretrial detention

(9) Despite the State party's agreement to the recommendation made under the universal periodic review to introduce practical measures to lower the number of pretrial detainees, the Committee is concerned that no sufficient action has yet been taken in this regard (arts. 2, 11 and 16).

The Committee recommends that the State party adopt measures to reduce the number of pretrial detainees and devise alternative, non-custodial measures, taking

into account the provisions of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the recommendation made during the universal periodic review.

Monitoring of police action

(10) The Committee is concerned at the absence of an independent body to monitor police action and investigate allegations and complaints of ill-treatment by members of the police force (arts. 2, 10, 12, 13 and 16).

The State party should establish an independent mechanism to monitor action by the police and investigate allegations and complaints of ill-treatment by members of the police force and ensure that law enforcement officials receive training on the absolute prohibition of torture and ill-treatment.

Discrimination, hate speech and violence against vulnerable groups

(11) The Committee is concerned at the absence of specific legislation to prevent and punish discrimination and incitement to violence, as well as measures against hate speech and other hate crimes (arts. 2, 12, 13, and 16).

The State party should take all necessary measures to prohibit and punish discrimination and incitement to violence against vulnerable groups and ensure that all hate crimes are always investigated, prosecuted and the perpetrators convicted and punished. In addition, the State party should take all necessary measures to prevent and condemn hate speech.

National human rights institution

(12) While noting the State party's commitment during the universal periodic review in November 2010 to establish a national human rights institution in accordance with the Principles relating to the Status of National Institutions (the Paris Principles), the Committee is concerned that such an institution has not yet been established three years later (art. 2).

The Committee recommends that the State party establish an independent national institution for the promotion and protection of human rights, with an appropriate mandate and adequate financial and staffing resources, in full compliance with the Principles relating to the Status of National Institutions (the Paris Principles) and request accreditation from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

Violence against women

(13) The Committee is concerned at the absence of specific legislation prohibiting all forms of violence against women and children, including domestic and sexual violence, as well as marital rape, and at the low number of investigations, prosecutions and convictions of the perpetrators of acts of violence against women (arts. 2, 12, 13, 14 and 16).

The State party should:

(a) Amend its legislation with a view to ensuring that all forms of violence against women and children are offences under the Criminal Code, including domestic and sexual violence and rape;

(b) Ensure that reports of domestic violence, including sexual violence and violence against children, are registered by the police, that such incidences of violence are promptly, impartially and effectively investigated and perpetrators prosecuted and punished in accordance with the gravity of their acts;

(c) Sensitize and train law enforcement personnel and judicial officials in the Public Prosecutor's Office in investigating and prosecuting cases of domestic violence and conduct awareness-raising campaigns for the general public;

(d) Ensure that victims of domestic, including sexual, violence benefit from protection, including restraining orders for the perpetrators, and have access to medical and legal services, including psychosocial counselling, rehabilitation and safe and adequately funded shelters.

Trafficking in human beings

(14) The Committee is concerned that the Criminal Code does not specifically criminalize trafficking in persons and at the absence of legislative and policy measures to combat trafficking in persons for the purposes of forced labour or prostitution (arts. 2, 10, 12, 13 and 16).

The State party should:

(a) Amend the Criminal Code with a view to specifically prohibiting trafficking in human beings as a criminal offence;

(b) Promptly, effectively and impartially investigate, prosecute and punish trafficking in persons and related practices;

(c) Increase the protection of and provide redress to victims of trafficking, including legal, medical and psychological aid and rehabilitation, as well as adequate shelters and assistance in reporting incidents of trafficking to the police;

(d) Provide specialized training to the police, prosecutors and judges on effective prevention, investigation, prosecution and punishment of acts of trafficking, and inform the general public through media campaigns of the criminal nature of such acts.

Asylum

(15) The Committee notes that national laws do not provide for the granting of asylum or refugee status and that there is no procedure for determination of refugee status (art. 3).

The State party should create a procedure for determination of refugee status for persons who could be recognized as refugees. It should also take clear legal measures to ensure that it does not expel, return (*refouler*) or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

Training

(16) The Committee is concerned that law enforcement officials do not receive specific training on the provisions of the Convention, including the absolute prohibition of torture, and that medical professionals dealing with persons deprived of liberty and asylum seekers do not receive training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (the Istanbul Protocol) (art. 10).

The State party should ensure training for law enforcement personnel, prison staff, border guards, judges and prosecutors on the absolute prohibition of torture and other provisions of the Convention. It should also ensure that the Istanbul Protocol is included in the training for all medical professionals and other public officials involved in work with persons deprived of their liberty and asylum seekers.

Solitary confinement

(17) While noting that no detainees have been placed in solitary confinement for more than seven days since 2008 in prisons in the State party, the Committee is concerned that current disciplinary regulations still allow for solitary confinement of up to 30 days as a disciplinary measure (arts. 11 and 16).

The Committee recommends that disciplinary regulations be amended to reduce the duration of placement in solitary confinement as a disciplinary measure to as short a time as possible and only if necessary.

Body searches

(18) The Committee is concerned that prisoners are routinely subjected to complete strip searches before and after family visits, which may amount to ill-treatment (arts. 11 and 16).

The Committee recommends that prison staff refrain from routinely subjecting prisoners to complete strip searches that may amount to degrading treatment. Complete strip searches should be conducted exceptionally, using the least invasive method possible, only when strictly necessary and with respect for the dignity of the prisoner.

Electrical discharge weapons

(19) While noting that electrical discharge weapons (such as "tasers") have been used in very few instances, the Committee is concerned that they have been used in closed settings such as prisons and are included in the standard equipment of prison staff (arts. 2, 11 and 16).

The State party should ensure that the regulations concerning the use of electrical discharge weapons are modified so that they are not part of the standard equipment for prison staff and can be used exclusively in extreme and limited situations where there is a real and immediate threat to life or risk of serious injury, as a substitute for lethal weapons and by trained law enforcement personnel only. The State party should revise the regulations governing the use of such weapons, with a view to establishing a high threshold for their use and expressly prohibiting their use on children and pregnant women. The Committee is of the view that the use of electrical discharge weapons should be subject to the principles of necessity and proportionality and should be inadmissible in the equipment of custodial staff in prisons or any other places of deprivation of liberty. The Committee urges the State party to provide detailed instructions and adequate training to law enforcement personnel entitled to use electrical discharge weapons and to strictly monitor and supervise their use.

Corporal punishment

(20) In light of the State party's commitment under the universal periodic review to enact and implement legislation that prohibits all corporal punishment of children, the Committee is concerned that corporal punishment is not yet explicitly prohibited in all settings (art. 16).

The Committee recommends that the State party enact and implement legislation that explicitly prohibits corporal punishment of children in all settings.

Other issues

(21) The Committee invites the State party to consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It also invites the State party to consider ratifying other United Nations human rights treaties to which it is not yet party, namely the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol thereto; the International Convention

on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto; and the International Convention for the Protection of All Persons from Enforced Disappearance. In addition, the State party should consider acceding to the Convention relating to the Status of Refugees and the Protocol thereto, the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.

(22) The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations in appropriate languages through official websites, the media and non-governmental organizations.

(23) The State party is invited to submit its common core document, in accordance with the requirements contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6).

(24) The Committee requests the State party to provide, by 22 November 2014, follow-up information in response to the Committee's recommendations relating to: (a) access to a doctor of their own choice for persons deprived of their liberty from the outset of deprivation of liberty; (b) sensitizing and training law enforcement personnel and judicial officials; and (c) strictly monitoring and supervising the use of electrical discharge weapons, as contained in paragraphs 8, 13 (c) and 19 respectively of the present document.

(25) The State party is invited to submit its next report, which will be the second periodic report, by 22 November 2017. For that purpose, the Committee invites the State party to accept, by 22 November 2014, to report under its optional reporting procedure, consisting in the transmittal by the Committee to the State party of a list of issues prior to the submission of the report. The State party's response to this list of issues will constitute, under article 19 of the Convention, its next periodic report.

55. Belgium

(1) The Committee against Torture considered the third periodic report of Belgium (CAT/C/BEL/3) at its 1182nd and 1185th meetings (CAT/C/SR.1182 and 1185), held on 5 and 6 November 2013, and adopted the following concluding observations at its 1201st meeting (CAT/C/SR.1201), held on 18 November 2013.

A. Introduction

(2) The Committee welcomes the third periodic report of the State party, prepared in compliance with the new optional reporting procedure under which a list of issues is established by the Committee.

(3) The Committee appreciates the quality of its dialogue with the State party's high-level delegation and of the responses provided orally to the questions and concerns raised during the consideration of the report.

B. Positive aspects

(4) The Committee takes note with satisfaction of the State party's ratification of or accession to the following instruments since the consideration of its second periodic report:

(a) The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, on 8 March 2013;

(b) The International Convention for the Protection of All Persons from Enforced Disappearance, on 2 June 2011;

(c) The Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, on 2 July 2009;

(d) The Council of Europe Convention on Action against Trafficking in Human Beings, on 27 April 2009.

(5) The Committee welcomes the efforts made by the State party to amend its legislation in areas related to the Convention, including:

(a) The Act of 13 August 2011, which amends the Code of Criminal Investigation and the Pretrial Detention Act of 20 July 1990 in such a way as to grant certain rights, including the right to consult and be assisted by a lawyer, to all persons being questioned and all persons deprived of their liberty (the "Salduz law");

(b) The Act of 12 September 2011, which amends provisions in the Foreign Nationals Act of 15 December 1980 relating to the issuance of temporary residence permits to unaccompanied foreign minors.

(6) In addition, the Committee welcomes the State party's efforts to amend its policies, programmes and administrative procedures in order to give effect to the Convention, including:

(a) The 2012–2014 action plan to combat human trafficking and the smuggling of human beings;

(b) The 2010–2014 national action plan to combat violence within couples and other forms of domestic violence;

(c) The 2008–2012–2016 master plan for the reduction of prison overcrowding.

(7) The Committee takes note with satisfaction of the information provided by the delegation on cooperation with the Extraordinary African Chambers established within the courts of Senegal to try Mr. Hissène Habré.

C. Principal subjects of concern and recommendations

Definition of torture

(8) While taking note of the explanations given by the State party in its report and during the dialogue, the Committee is of the view that article 417 bis of the Criminal Code, which defines torture, still does not include all the elements of the definition of torture set forth in article 1 of the Convention, such as acts of torture committed by a third person at the instigation of or with the consent or acquiescence of a public official or acts of torture motivated by discrimination of any kind (art. 1).

The Committee reiterates its earlier recommendation (CAT/C/BEL/CO/2, para. 14), adopted in November 2008, and requests the State party, as a matter of priority, to amend article 417 bis of the Criminal Code so that its legal definition of torture incorporates all the elements contained in article 1 of the Convention. In the light of its general comment No. 2 (2007) on the implementation of article 2 by States parties, the Committee considers that, by defining the offence of torture in accordance with the definition in the Convention, States parties will directly advance the Convention's overarching aim of preventing torture.

National human rights institution

(9) The Committee welcomes the State party's commitment to establish a national human rights institution and the creation of a working group for that purpose. It regrets, however, that there is no national institution for the promotion and protection of human rights that has been accredited with "A" status by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). It notes that progress towards the establishment of such an institution remains limited and that consultations with civil society actors have yet to be held (art. 2).

The Committee urges the State party to expedite the establishment of a national human rights institution in accordance with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (Paris Principles) by conferring the broadest possible mandate for the promotion and protection of human rights on the institution and ensuring that it is autonomous, independent and pluralistic. The Committee encourages the State party to actively involve civil society actors in this process.

Ratification of the Optional Protocol to the Convention

(10) While taking note of the explanations provided by the State party during the dialogue, the Committee regrets that the process involved in ratifying the Optional Protocol to the Convention has not advanced in recent years. Furthermore, the Committee remains concerned about the lack of systematic, effective and independent monitoring and inspections of all places of detention (art. 2).

The Committee invites the State party to take the necessary measures to ratify the Optional Protocol to the Convention with a view to putting in place a system of regular, unannounced visits by national and international observers for the purpose of preventing torture and other cruel, inhuman or degrading treatment or punishment.

Fundamental legal safeguards

(11) While applauding the adoption of the "Salduz law", which affords greater protection for the rights of persons from the moment that they are placed in custody, the Committee remains concerned that the right of access to a lawyer is effective only from the time persons are first questioned by the police rather than as soon as they are placed in custody, that private consultations with a lawyer are limited to 30 minutes, which is all the more restrictive for persons who are detained, and that, in practice, there are limitations on this right in respect, for example, of lawyers' prompt access to case files. In addition, the Committee notes that the right to be examined by an independent physician and the right to contact family members or other persons of the detainee's choice are restricted and that persons are informed of their rights in writing, without any explanation, which makes it difficult for some persons who have been deprived of their liberty to understand them (arts. 2 and 11).

The Committee recommends that the State party take effective steps to ensure that all persons who are held in custody actually have the benefit, from the very outset of their deprivation of liberty, of all the fundamental legal safeguards, namely, the right to be informed in an appropriate language of the reasons for their detention, the right to have prompt access to a lawyer and to consult him or her immediately following their detention, the right to contact family members or other persons of their choice and the right to have an independent medical examination performed without delay by a doctor of their choice.

Register of persons in police custody

(12) The Committee notes with concern that the general register of persons held in police custody provided for in article 33 bis of the Police Functions Act has not yet been introduced. The Committee also regrets that, according to the information provided by the State party in its report, each police district has created its own register, which does not always contain enough information to make it possible to ensure that detainees' rights are respected (arts. 2 and 11).

The Committee reiterates its earlier recommendation (CAT/C/BEL/CO/2, para. 20) and urges the State party to take appropriate measures to establish a standardized, computerized and centralized official register in which arrests are immediately and scrupulously recorded, along with, as a minimum, the following information: (i) the

time of the arrest and detention; (ii) the reason for detention; (iii) the name(s) of the arresting officer(s); (iv) the location where the person is detained and any subsequent transfers; (v) the names of the officers responsible for that person while in custody; and (vi) whether the detainee had any signs of injury at the time of detention. The State party should carry out monitoring and inspections on a systematic basis in order to ensure compliance with this obligation in line with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173 of 9 December 1988).

Use of force by law enforcement officials and immediate, thorough and impartial investigations

(13) The Committee takes note with concern of reports that, in some cases, law enforcement officials use excessive and unjustified force during questioning or arrests. The Committee deeply regrets the fact that Jonathan Jacob reportedly died in a cell at the Mortsel police station on 6 January 2010 after being subjected to physical violence by police officers. The Committee also deeply regrets the fact that, three years after the event, the investigation has not been concluded and the perpetrators have not been brought to justice and therefore remain unpunished. The Committee takes note with concern of reports that judicial sanctions imposed upon police officers who are found guilty of acts of torture or ill-treatment are often symbolic and not commensurate with the seriousness of the acts in question. Despite the efforts of the State party to strengthen the independence of the Standing Committee for Police Monitoring (Committee P) and its Investigation Service, the Committee remains concerned by the fact that some of the investigators are former police officers, which may compromise their impartiality when they are required to conduct objective and effective investigations into allegations that acts of torture and ill-treatment have been committed by members of the police (arts. 2, 12, 13, and 16).

The State party should:

(a) Conduct prompt, thorough, effective and impartial investigations into all alleged cases of brutality, ill-treatment and excessive use of force by law enforcement personnel, and prosecute and sanction officials found guilty of such offences with appropriate penalties;

(b) Provide detailed information on the investigation into the case of Jonathan Jacob;

(c) Set up a fully independent mechanism for the investigation of allegations of torture and ill-treatment and establish a specific register of allegations of torture and cruel, inhuman or degrading treatment or punishment;

(d) Ensure that law enforcement officials receive training on the absolute prohibition of torture and that they abide by the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;

(e) Take appropriate measures to further strengthen supervision and monitoring mechanisms for the police force, particularly Committee P and its Investigation Service, which should be composed of independent experts recruited from outside the police.

Complaint mechanisms in prisons and closed centres

(14) The Committee notes with concern that the Principles Act of 12 January 2005, which deals with prison administration, the legal status of prisoners and the right to complain to an independent body, has not yet entered into force. The Committee further notes the explanations given by the State party as to how the Complaints Commission functions in closed centres, but remains concerned that foreigners often have difficulties in

filing complaints and that no decision on the merits is adopted when the complainant has been expelled (arts. 12, 13 and 16).

The Committee invites the State party to take measures to implement the provisions of the Principles Act aimed at establishing an effective, independent complaints mechanism specifically devoted to monitoring and processing complaints in detention centres. The State party should take the necessary measures to ensure that all allegations of misconduct by detention centre and prison staff are duly examined and thoroughly and impartially investigated.

Conditions of detention

(15) The Committee welcomes the measures taken by the State party to reduce prison overcrowding, such as the adoption of a master plan that provides for the renovation and expansion of existing prisons and the establishment of new prison facilities. However, the Committee is concerned that some detention centres have an overcrowding rate of over 50 per cent, which breeds violence between prisoners and leads to the frequent use of force by custodial staff. The Committee is also concerned about the poor sanitary conditions, inadequate access to health care, the lack of medical personnel in several places of detention and the failure to separate convicted prisoners from remand prisoners and adults from minors. It regrets that poor working conditions have led prison staff to go on strike, which has had a harmful impact on conditions of detention (arts. 11, 12, 13 and 16).

The Committee recommends that the State party:

(a) Step up its efforts to alleviate overcrowding in prisons and other places of detention by, in particular, making use of non-custodial measures as provided for in the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);

(b) Continue to improve the infrastructure of prisons and other places of detention and ensure that conditions of detention in the State party do not breed violence among prisoners;

(c) Separate the different categories of prisoners, ensuring that remand prisoners are separated from convicts and that minors are separated from adults;

(d) Take the necessary measures to improve working conditions for prison staff and to ensure a level of service in prisons that will ensure that prisoners' fundamental rights are respected, even in the event of a strike.

Full body searches

(16) The Committee is concerned about the amendments made to the Principles Act by the Act of 1 July 2013, which authorizes routine full body searches when a detainee has been in contact with the outside world. Although the Constitutional Court has ruled that the application of these measures should be suspended, the Committee is still concerned that they have not yet been repealed and could be implemented in the future (art. 11).

The Committee urges the State party to repeal the provisions of the Act of 1 July 2013 which authorize systematic body searches. The State party should ensure that body searches are conducted only in exceptional cases and by the least intrusive means possible, with full respect for the dignity of the person. The State party should take steps to adopt precise and strict instructions to restrict the use of body searches.

Training for public officials regarding the absolute prohibition of torture

(17) The Committee takes note of the information provided by the State party in its report and during the dialogue concerning the training sessions, seminars and courses on human

rights organized for judges, prosecutors, police officers, prison officials and members of the military. Nonetheless, the Committee is concerned by the absence of a direct reference to the Convention and to the prohibition of torture in training courses for members of the national police force, as well as in other training courses for civil servants and public and administrative officials. Recalling its previous concluding observations (CAT/C/BEL/CO/2, para. 15), the Committee also regrets that the Police Service Code of Ethics does not yet explicitly prohibit torture and that no mention is made of the sanctions to which police officials may be liable if they fail to meet their obligations (arts. 2, 10 and 16).

The State party should further develop and strengthen training programmes to ensure that all officials, above all judges and law enforcement officials, members of the military and prison personnel, are familiar with the provisions of the Convention and, in particular, that they are fully aware of the absolute prohibition of torture. Furthermore, all relevant personnel, including health-care professionals, who are in contact with prisoners and asylum seekers should receive specific training on how to identify signs of torture and ill-treatment. This should include an introduction to the use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol). In addition, the State party should develop evaluation mechanisms to assess the effectiveness and impact of such training and educational programmes. The Committee also invites the State party to take the necessary steps to include an explicit prohibition of torture in the Police Service Code of Ethics and to ensure that police officers observe the absolute prohibition of torture when performing their duties.

Agreement between the State party and the International Committee of the Red Cross (ICRC)

(18) The Committee takes note that in April 2010 the State party reached an agreement in principle with ICRC to allow ICRC staff to visit persons detained in connection with the fight against terrorism and to evaluate their conditions of detention or internment. It regrets, however, that the agreement is not yet operational (arts. 2, 11 and 16).

The Committee encourages the State party to make the agreement with ICRC operational as soon as possible in order to enable this international humanitarian organization to objectively evaluate the conditions of detention of persons held in connection with the fight against terrorism.

Mental health care for detainees

(19) The Committee reiterates its concern about the conditions in which inmates with serious mental health problems are held in the State party's prison system. The Committee regrets that the mental health services available in prisons remain inadequate owing to the lack of qualified staff and suitable facilities (arts. 11 and 16).

The Committee recalls its previous recommendation (CAT/C/BEL/CO/2, para. 23) and invites the State party to take all the measures necessary to ensure that detainees with mental health problems receive suitable care. To this end, the State party should increase the capacity of its psychiatric hospital services and facilitate access to mental health services in all prisons.

Expulsions

(20) While taking note of the information provided by the State party about the supervision of expulsions by the Inspectorate-General of the Federal and Local Police (AIG), the Committee remains concerned that this body may lack the human and financial resources it would need to carry out its mandate. It is also concerned by reports that the staff involved in expulsions are actually police officers on secondment. Moreover, the Committee is concerned by reports that excessive means of restraint are used during

expulsions, which stands in contrast with the small number of complaints received by AIG. The Committee also regrets that non-governmental organizations (NGOs) still have only limited access to expulsion operations and that oversight mechanisms, such as video recordings, have not yet been set up (art. 3).

The Committee requests the State party to take the necessary measures to strengthen the independence, impartiality and efficiency of AIG, in particular by providing it with appropriate means to monitor expulsions and by giving it the necessary means to receive and consider complaints. The Committee reiterates its previous recommendation (CAT/C/BEL/CO/2, para. 6) and requests the State party to take measures to enhance oversight, such as the use of video recordings and monitoring by NGOs. The Committee recommends that the State party take effective measures to restrict the use of means of restraint during expulsion operations.

Administrative detention of asylum seekers

(21) The Committee commends the State party for its efforts in respect of asylum and refugees, which have included the use of alternatives to detention for families with children who are seeking asylum. However, the Committee remains concerned by reports that, as a result of the application of the Dublin II Regulation, asylum seekers are systematically detained for the entire duration of the asylum procedure and by the information provided by the State party during the dialogue, according to which, asylum seekers may be deprived of their liberty for as long as 9 months in such cases (arts. 11 and 16).

The Committee urges the State party to ensure that the detention of asylum seekers is used only as a last resort and, where necessary, for as short a period as possible and without excessive restrictions. It also urges the State party to establish and use arrangements other than the detention of asylum seekers.

Non-refoulement and the risk of torture

(22) The Committee is concerned by the fact that the State party's existing extradition and refoulement procedures make it possible to extradite a person who is at risk of being tortured if the State party has obtained diplomatic assurances (art. 3).

The Committee recalls its position that States parties may in no circumstances rely on diplomatic assurances rather than observing the principle of non-refoulement, which may alone serve as a guarantee of adequate protection against the risk of torture or ill-treatment when there are substantial grounds for believing that a person would be in danger of being subjected to torture. In order to determine the applicability of the obligations it has assumed under article 3 of the Convention, the State party should thoroughly examine the merits of each individual case, including the overall situation with regard to torture in the country concerned.

Measures of redress and compensation for victims of torture or ill-treatment

(23) The Committee is concerned about the lack of information on the number of claims for compensation made by victims of acts of torture or ill-treatment and on the compensation awarded to victims. The Committee also regrets the absence of information on the measures taken by the State party to provide rehabilitation for the victims of torture or ill-treatment (art. 14).

Recalling its general comment No. 3 (2012) on the application of article 14 by States parties, the Committee recommends that the State party ensure that all victims of acts of torture or ill-treatment can fully exercise their right to redress and receive the means necessary for their full rehabilitation.

Use of confessions obtained as a result of torture

(24) While taking note of the adoption of the Act of 24 October 2013, which amends the Code of Criminal Procedure with regard to the invalidity of evidence obtained improperly, the Committee remains concerned that the Act does not contain an explicit provision on the inadmissibility of evidence obtained as a result of torture (art. 15).

The Committee urges the State party to amend its legislation so that statements obtained as a result of torture or ill-treatment may not be used or invoked as evidence in any proceedings, except as evidence against the person accused of torture.

Administration of juvenile justice

(25) The Committee continues to be concerned that, under the law, children aged 16 to 18 who are in conflict with the law may be tried as adults and, if convicted, held in prisons for adults. The Committee is also concerned by the sluggishness of certain judicial procedures (art. 11).

The Committee recalls its previous recommendation (CAT/C/BEL/CO/2, para. 17) and requests the State party to establish a system of juvenile justice that fully conforms to the provisions of the Convention on the Rights of the Child, in law and in practice, and to ensure that persons under the age of 18 are not tried as adults. The Committee recommends that the State party take the necessary steps to speed up judicial procedures.

Use of electroshock weapons

(26) Despite the State party's clarifications concerning current legislation on the use of force by the police and concerning the rules and conditions for the use of Tasers by police officers, the Committee remains concerned by the fact that the use of such weapons is not subject to thorough supervision (arts. 2, 11 and 16).

The State party should ensure that electroshock weapons are used only under extreme circumstances as an alternative to lethal weapons, as, for example when there is a real and immediate threat to life or a risk of serious injury. The State party should also ensure that these weapons are only used by duly qualified personnel. The Committee is of the opinion that the use of electroshock weapons should be subject to the principles of necessity and proportionality and should not be a permissible part of the equipment provided to warders in prisons and other places of deprivation of liberty. The Committee recommends that the State party strictly supervise and monitor the use of these weapons and step up its efforts to ensure observance of the rules and conditions for their use by law enforcement officials.

Corporal punishment

(27) While taking note of the awareness-raising campaigns organized to prevent violence against children, the Committee notes with concern that the State party has not yet adopted specific legislation expressly prohibiting corporal punishment under all circumstances, particularly in the family and non-institutional childcare settings (arts. 2 and 16).

The Committee recommends that the State party expressly prohibit corporal punishment of children in all settings, and, as a matter of priority, in the family and non-institutional childcare settings.

Other issues

(28) The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

(29) The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in the appropriate languages, through official websites, the media and non-governmental organizations.

(30) The Committee requests the State party to provide information by 22 November 2014 on the follow-up to the Committee's recommendations on: (a) introducing or strengthening legal safeguards for persons held in custody; (b) promptly conducting effective, impartial investigations; (c) proceedings against suspects and the penalties handed down to the perpetrators of ill-treatment; and (d) establishing a central policy custody register and a complaint mechanism in prisons and closed centres (see paragraphs 11, 12, 13 and 14 above).

(31) The State party is invited to submit its fourth periodic report by 22 November 2017. For that purpose, the Committee will submit a list of issues prior to reporting to the State party in due course, since the State party has agreed to report to the Committee under the Optional Protocol procedure.

56. Burkina Faso

(1) The Committee considered the initial report of Burkina Faso (CAT/C/BFA/1) at its 1184th and 1187th meetings (CAT/C/SR.1184 and 1187), held on 6 and 7 November 2013, and adopted the following concluding observations at its 1202nd and 1203rd meetings (CAT/C/SR.1202 and 1203), held on 19 November 2013.

A. Introduction

(2) The Committee welcomes the initial report of Burkina Faso, which is in conformity with the Committee's guidelines on reporting. It regrets, however, that the State party submitted the report 12 years late, which prevented the Committee from assessing implementation of the Convention by the State party.

(3) The Committee welcomes the frank dialogue that it held with the high-level delegation of the State party and the replies given orally to the Committee members' questions during the consideration of the report.

B. Positive aspects

(4) The Committee notes with appreciation that, since the Convention's entry into force in February 1999, the State party has ratified or acceded to the international instruments listed below:

(a) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 26 November 2003;

(b) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 10 October 2005;

(c) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 31 March 2006 and 6 July 2007, respectively;

(d) The Convention on the Rights of Persons with Disabilities and its Optional Protocol, 23 July 2009;

(e) The International Convention for the Protection of All Persons from Enforced Disappearance, 3 December 2009;

(f) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 7 July 2010;

(g) The Rome Statute of the International Criminal Court, 16 April 2004;

(h) The United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 15 May 2002.

(5) The Committee appreciates the efforts that the State party has made to review its legislation in the areas related to the Convention, in particular its adoption of:

(a) Act No. 029-2008/AN on combating human trafficking and related practices, (2008);

(b) Act No. 042-2008/AN on the status of refugees in Burkina Faso (2008);

(c) Act No. 062-2009/AN on the establishment of the National Human Rights Commission (2009), amended in 2010 by Act No. 039-2010/AN.

(6) The Committee also welcomes the steps taken by the State party to change its policies, programmes and administrative procedures to give effect to the Convention, in particular:

(a) The establishment of the National Committee to Combat the Practice of Excision and the adoption of the National Action Plan 2008–2012, entitled "Zero tolerance for female genital mutilation";

(b) The adoption of the National Action Plan to Combat the Worst Forms of Child Labour, in June 2012;

(c) The adoption of the National Action Plan for Human Rights and the Promotion of Civic Values 2012–2022.

(7) The Committee furthermore welcomes the cooperation that the State party has extended to the special procedures of the Human Rights Council, particularly the Special Rapporteur on the human rights of migrants and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, during visits to Burkina Faso. The Committee encourages the State party to invite the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to visit the country.

C. Main subjects of concern and recommendations

Definition and classification of torture as an offence

(8) While the Committee takes note of the information provided by the State party concerning the draft bill on the definition, prevention and punishment of the offence of torture and related practices, it is concerned by the fact that, 14 years after acceding to the Convention, the State party has yet to define or to classify torture as a separate offence in its legislation. The Committee is concerned by the fact that acts of torture carry the penalties prescribed, among other things, for malicious wounding, assault and battery or causing bodily harm or injury, which suggests that the penalties do not take into account the grave nature of acts of torture. The Committee continues, therefore, to be concerned by the existence of legal loopholes that allow a situation of impunity for acts of torture to continue, insofar as the bill has neither been adopted nor promulgated (arts. 1 and 4).

The State party should step up its efforts to revise the country's Criminal Code so as to make torture a separate offence. It should at the same time ensure that the definition of torture is consistent with the one set out in article 1 of the Convention. In the light of its general comment No. 2 (2008) on the implementation of article 2 by States parties, the Committee is of the view that if there are significant discrepancies

between the definition of torture provided in domestic law and that found in the Convention, this may result in actual or potential loopholes for impunity. The State party should ensure that the penalties prescribed will be in proportion with the gravity of the acts committed.

Absolute prohibition of torture

(9) The Committee notes with concern that the law of the country does not absolutely prohibit torture under any and all circumstances and that acts of torture were reportedly committed during the sociopolitical crisis in 2011. It furthermore regrets that there are no legal provisions stating that there shall be no statute of limitations for the offence of torture (art. 2).

The State party should enact legislation against torture so as to establish an absolute prohibition of torture, stating that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. The State party should also establish that there shall be no statute of limitations for the offence of torture.

Allegations of torture and ill-treatment

(10) The Committee remains gravely concerned by reports that law enforcement officers have perpetrated acts of torture and ill-treatment either while questioning people at police or gendarmerie stations or during operations to quell peaceful demonstrations. The Committee remains concerned by the fact that several such acts have gone unpunished, as in the cases of David Idogo, Dié Kambou, Etienne Da, Moumouni Isaac Zongo and Ousseni Compaore. The Committee is also concerned by the absence of legal provisions establishing that statements or confessions obtained under torture are inadmissible in court, except when such a statement is invoked as evidence against a person accused of torture (arts. 2, 11, 15 and 16).

The State party should:

(a) Take immediate and effective action to prevent acts of torture and ill-treatment and put an end to the impunity enjoyed by several of the alleged perpetrators of such acts. In this connection, it should promptly conduct thorough, independent and impartial investigations into all allegations of torture and ill-treatment and prosecute the perpetrators of the aforementioned acts;

(b) Make police and gendarmerie officers aware of the absolute prohibition of torture and of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; and

(c) Ensure that a provision is included in the legislative amendments currently being introduced so that statements made as a result of coercion or torture may not be invoked as evidence in any court proceedings. The State party should make sure that judges are instructed and aware that it is unconstitutional to obtain statements through the use of torture, that such statements are inadmissible and that they have an obligation to initiate an investigation when they receive allegations of acts of torture.

Fundamental legal safeguards

(11) The Committee is concerned by the fact that persons in detention are not afforded full and fundamental legal safeguards from the outset of deprivation of liberty, in particular that they are not granted the legal right to the assistance of a lawyer during police investigations, on the grounds that such investigations are secret. The Committee is also concerned about the fact that suspects might not always be afforded the opportunity to contact their relatives or a close family member, on the same grounds. The Committee is

also concerned by the fact that a person can be held in police custody for up to 15 days without being presented to a court if he or she is suspected or accused of involvement in organized crime (arts. 2, 11, 12 and 16).

The State party should:

(a) Take all necessary measures to ensure, in law and in practice, that all persons who are deprived of their liberty are afforded fundamental legal safeguards from the outset of police custody, in the light of the Committee's general comment No. 2 (2008) on the implementation by States parties of article 2, namely:

(i) The right to be informed of the reasons for the arrest in a language that they understand;

(ii) Access to a lawyer from the outset of deprivation of liberty and, if necessary, to legal assistance;

(iii) The opportunity to have a medical examination by an independent physician of their choice;

(iv) The right to contact a family member or close acquaintance; and

(v) The right to be presented before a judge within 48 hours;

(b) Expedite the revision of its Code of Criminal Procedure in order to bring it into line with international human rights standards. The State party should provide additional financial and human resources to the judiciary, including resources for the Legal Assistance Fund; and

(c) Revise Act No. 017-2009/AN of 5 May 2009 on organized crime with a view to significantly reducing the length of time that suspects are held in police custody and thus prevent any infringement of the fundamental legal safeguards that are accorded to all persons who are deprived of their liberty.

Investigations and prosecutions

(12) The Committee is concerned by the fact that no investigations have been conducted by the State party into many alleged acts of torture and ill-treatment which, in some cases, have reportedly resulted in the deaths of persons in detention. The Committee is also concerned that no prosecutions have been brought in the cases of the death in detention or fatal shootings of Moumouni Zongo, Romuald Tuina, Ouedraogo Ignace, Ouedraogo Lamine, Halidou Diande, Arnaud Some and Mamadou Bakayoko. The Committee is also concerned by reports of hazing and other forms of ill-treatment being carried out during military training (arts. 12, 13 and 16).

The State party should:

(a) Take appropriate measures to ensure that thorough, independent and impartial investigations are conducted into all reports of alleged torture and ill-treatment by an independent and impartial body, that the perpetrators are prosecuted and, if convicted, are given sentences that are in proportion with the gravity of the offence, and that the victims or their families receive appropriate compensation and redress;

(b) Investigate the individual cases mentioned by the Committee and inform the Committee of the outcome of investigations undertaken and of criminal or disciplinary proceedings; and

(c) Take steps to prevent hazing of any kind in the army and ensure that all complaints about hazing or deaths of recruits in non-combat situations are

investigated promptly and impartially, that the perpetrators are prosecuted and the victims compensated.

Case of Moussa Dadis Camara

(13) The Committee takes note of the information concerning the absence of any request from Guinea for the extradition of Moussa Dadis Camara, the former President of that country, for whom, according to the findings of the international Commission of Inquiry for Guinea established by the Secretary-General in October 2009, there are sufficient grounds for the presumption of direct criminal responsibility, inter alia for the massacre and torture of demonstrators in Conakry during the events of 28 September 2009 (S/2009/693, annex, paras. 118 to 125 and 215). The Committee is concerned about the fact that the head of the delegation of the State party maintained that in the absence of an extradition request, Burkina Faso was not competent to prosecute Mr. Camara. The Committee considers that such a position is inconsistent with article 6, paragraph 1, of the Convention, which calls for States parties to conduct criminal proceedings or extradite any person accused of acts of torture (arts. 6 and 7).

In the absence of an extradition request, the State party should prosecute all persons responsible for acts of torture or other international crimes who are present in its territory, including the former President, Moussa Dadis Camara, in keeping with its obligations under the Convention and the other international instruments that the State party has ratified. The State party should cooperate with Guinea in the framework of the international request for judicial assistance that it has issued so as to allow judges in Burkina Faso to question Mr. Camara about the massacre in which he was allegedly involved.

Direct application of the Convention by the domestic courts

(14) The Committee regrets the lack of information about the direct application of the Convention by the domestic courts, having regard to article 151 of the Constitution, which states that international treaties ratified by Burkina Faso take precedence over domestic laws. It regrets that no information has been provided about cases where the Convention has been invoked or applied by the State party's courts (arts. 2 and 12).

The State party should continue to provide training on the Convention that is targeted in particular at judges, magistrates, prosecutors and lawyers and designed to familiarize them with the provisions of the Convention which they will be able to invoke directly in court. The State party should compile and provide information about specific cases where the Convention has been directly invoked or applied.

National Human Rights Commission

(15) Notwithstanding the efforts made by the State party to adopt a law establishing the National Human Rights Commission, the Committee regrets that the Commission's accreditation with the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights has expired. The Committee is concerned about the lack of resources that prevent the Commission from being operational (art. 2).

The State party should establish a separate budget for the Commission to allow it to function properly and to guarantee its independence. The State party should ensure that the Commission has sufficient human and financial resources to carry out its mandate, in conformity with the Paris Principles (General Assembly resolution 48/134 of 20 December 1993, annex). It should also request accreditation for the Commission from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

National preventive mechanism

(16) The Committee regrets that the State party has not established a national preventive mechanism since ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in July 2010 (art. 2).

The State party should expedite the establishment of a national preventive mechanism and allocate the necessary human and financial resources to enable it to carry out its functions effectively and independently, in line with the relevant provisions of the Optional Protocol and with the basic principles of the guidelines on national preventive mechanisms of the Sub-Committee on Prevention of Torture (CAT/OP/12/5).

Independence of the judiciary

(17) The Committee remains concerned by reports that the judiciary is not independent of the executive branch, in particular that the Higher Council of the Judiciary remains under the authority of the executive. It is concerned by a number of reports of corruption pervading the judiciary, notwithstanding the action taken by the State party to correct this situation. The Committee is also concerned about the refusal in 2009 (A/HRC/10/80, para. 100) of the recommendation in paragraph 58 (a) of the report of the Working Group on the Universal Periodic Review, requesting the State party to make every possible effort to ensure that the justice system can operate independently and that all political influence on the legal system is eliminated (arts. 2 and 12).

The State party should:

(a) Take appropriate measures to guarantee and protect the judiciary's independence and ensure that the judiciary, including the Higher Council of the Judiciary, is able to carry out its functions free from any pressure or interference on the part of the executive, in line with the Basic Principles on the Independence of the Judiciary (General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985);

(b) Provide the judiciary with the human and financial resources that it needs to guarantee its independence by ending any political influence on the judicial system and combating corruption more assiduously.

Redress

(18) While noting that article 3 of the Code of Criminal Procedure allows for victims to sue for damages in criminal proceedings, the Committee regrets that no redress has been afforded by the courts of the State party to victims of acts of torture or ill-treatment. The Committee also regrets that rehabilitation measures, including medical treatment and social rehabilitation services, have not been established for victims of torture (art. 14).

The State party should take appropriate measures to ensure that victims of acts of torture and ill-treatment receive full and fair redress and the fullest possible rehabilitation. It should provide detailed information on the follow-up given to such cases involving compensation for victims of torture or ill-treatment.

The Committee draws the State party's attention to general comment No. 3 (2012), concerning the implementation of article 14 by States parties, in which the Committee explains and clarifies the content and scope of the obligation of States parties to ensure and provide full redress to victims of torture or ill-treatment.

Prison conditions

(19) Despite the efforts made by the State party to build new prisons, the Committee remains deeply concerned by the poor conditions in the country's prisons, including

insanitary conditions which reportedly have caused several deaths. It also regrets that the State party has not made sufficient use of non-custodial measures to ease overcrowding in prisons. The Committee is also concerned that there is no effective system for separating inmates by category (arts. 2, 11 to 14 and 16).

The State party should step up its efforts to improve prison conditions in line with international standards and with the Standard Minimum Rules for the Treatment of Prisoners. It should inter alia:

(a) Significantly reduce prison overcrowding, in particular in the prisons of Bobo-Dioulasso, Fada N'gourma, Ouagadougou and Tenkodogo, by making greater use of non-custodial measures, in the light of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);

(b) Ensure that prisoners have access to health care, a proper and varied diet and hygienic conditions;

(c) Ensure that young prisoners are kept separate from adults, untried prisoners from convicts and women from men;

(d) Establish an effective, independent and confidential mechanism for lodging complaints about conditions of detention, including any ill-treatment, and ensure that thorough, impartial and independent investigations are conducted into any and all complaints;

(e) Strengthen judicial supervision of prison conditions; and

(f) Guarantee that the National Human Rights Commission, non-governmental organizations and the future mechanism for the prevention of torture have unhindered access to all places of detention through, in particular, unannounced visits and the ability to speak with prisoners in private.

Orders from a superior officer

(20) While taking note of Decree No. 2004-077/SECU/CAB of 27 December 2004 on the code of conduct of the national police force, which stipulates that subordinates must comply with instructions from their superiors except where an order is manifestly unlawful and would seriously jeopardize the public interest, the Committee remains concerned that these provisions only apply to the national police and do not offer subordinates who refuse to obey such an order protection against retaliation by superior officers (art. 2).

The State party should guarantee for all law enforcement officers the right, both in law and in practice, as subordinates to refuse to execute an order from their superior officers that would result in a contravention of the Convention. The State party should develop a mechanism to protect from reprisals subordinates who refuse to obey orders from a superior officer if they would result in a contravention of the Convention.

Customary practices that are harmful to women and violence against women

(21) The Committee takes note of the increased efforts made by the State party to combat female genital mutilation. However, it remains concerned that neither this practice, nor other discriminatory practices that are harmful to women, such as forced and early marriages and levirate and sororate marriages, have stopped. The Committee also remains concerned by reports that some elderly women have been accused of witchcraft and thus subjected to physical and verbal violence and rejected by their community, and are now housed in shelters (arts. 2, 12 to 14 and 16).

The State party should intensify its efforts to combat customary practices that are harmful to women, including female genital mutilation and forced marriage, inter alia by stepping up campaigns to alert the public to the harmful effects of certain customs

that are detrimental to women. It should continue its efforts to provide care for elderly women who are accused of witchcraft and ensure that all possible measures are taken to help such women reintegrate into society. The State party should also prosecute the perpetrators of violence against women and compensate the victims.

Violence against children

(22) While noting the efforts of the State party to protect children's rights and, in particular, to protect children against trafficking and similar practices, the Committee remains concerned by the lack of information about measures taken to combat the exploitation of *talibé* and *garibou* street children in begging and the economic exploitation of children in gold mines and in private homes. The Committee also remains concerned by reports that children continue to be subjected to corporal punishment in the home (arts. 2, 12 and 16).

The State party should:

(a) Prosecute any persons who force children to beg and apply the penalties on them that are set out in the Criminal Code, establishing a monitoring, complaints and assistance mechanism for such children and organizing campaigns to raise awareness among parents and those who run Koranic schools of the harmful effects of begging on children;

(b) Put an end to the economic exploitation of children in gold mines and in private homes by taking all necessary measures to combat and eliminate these practices;

(c) Conduct campaigns to raise awareness of the harmful effects of corporal punishment on children; and

(d) Revise its legislation to include a prohibition on corporal punishment in the home.

Juvenile justice

(23) The Committee is concerned by reports that the juvenile justice system does not function properly and regrets the lack of information on whether or not a system of non-custodial penalties for minors is in effect (arts. 2, 10 and 16).

The State party should:

(a) Step up its efforts to ensure the proper functioning of the juvenile justice system through the allocation of adequate human and financial resources and the training of qualified staff;

(b) Ensure that minors are detained only as a last resort and for the shortest possible period and use non-custodial measures for minors who are in conflict with the law; and

(c) Ensure, furthermore, that minors who are deprived of their liberty are afforded full legal safeguards and, if convicted, are held separately from adults in all prisons throughout the country, in the light of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines).

Death penalty

(24) While it notes that the State party has not applied the death penalty since 1988 and that an official moratorium has been in effect since 2007, the Committee regrets that the abolition of the death penalty has not yet been formally embodied in the law and that,

according to non-governmental sources, at least 10 prisoners are on death row (arts. 2 and 16).

The Committee encourages the State party to continue to make the public aware of this issue and to consider the possibility of abolishing the death penalty and ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

Situation of refugees

(25) While it appreciates the efforts of the State party to host a large number of refugees, particularly Malian refugees who arrived following the outbreak of conflict in their country, the Committee nevertheless remains concerned because the Appeals Committee, which should offer asylum seekers the opportunity to appeal against adverse decisions, is not yet operational. It also remains concerned by the fact that persons can be refused refugee status if they are accused of lesser offences or of serious crimes. The Committee also notes with regret the difficulties that refugees trying to enter the job market face, notwithstanding the efforts made by the State party (arts. 2, 3 and 16).

The State party should expedite efforts to allow the Appeals Committee to operate effectively in order to enable asylum seekers to exercise their rights and thus to prevent any possible abuses. Where an asylum seeker is in conflict with the law, the State party should initiate the necessary investigation and prosecution procedures while at the same time considering the applicant's request for international protection in accordance with the Convention relating to the Status of Refugees. The State party should also ensure that the 2008 Act on the rights of refugees, including the right to work, is enforced and should continue to raise public awareness in this regard.

Mob justice

(26) The Committee remains concerned by reports of mob attacks against thieves and other alleged offenders by members of the general public, presumably due to a lack of confidence in the judicial system. The Committee is particularly concerned by reports that such mob attacks have resulted in the death of alleged offenders and, in some cases, have taken place in front of police officers (arts. 2 and 16).

The State party should take appropriate measures to put a stop to mob attacks and lynching, by conducting information and education campaigns on the need to eliminate such practices and by prosecuting and punishing any perpetrators. It should furthermore take steps to guarantee the credibility of the judicial system and to develop a community-based justice system.

Training

(27) The Committee takes note of the information provided by the State party about the talks on the Convention that are held each year for students of the National Police Academy, the National School for Non-Commissioned Officers of the Gendarmerie and the Military Academy and for officers currently working for the criminal investigation service. However, it regrets that no training on the Convention or on the detection of acts of torture is offered to judges, prosecutors or forensic doctors. It notes with interest that a training manual for the police and the gendarmerie has been produced in collaboration with the Danish Institute for Human Rights. However, the Committee regrets that the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) is not used in the above-mentioned training and that the courses have not had any real impact in terms of reducing the incidence of torture in the State party (art. 10).

The State party should:

(a) Reinforce the training programmes on the Convention that it offers to civilian and military law enforcement officers and extend them to judges, prosecutors, lawyers and medical and prison staff;

(b) Include the Istanbul Protocol in these training programmes so that the trainees, particularly medical staff, will be better equipped to detect and document signs of torture and ill-treatment; and

(c) Assess the effectiveness of the training courses and their impact on compliance with and the implementation of the Convention, and carry out public awareness campaigns on the prevention and prohibition of torture.

Lack of statistical data

(28) The Committee regrets the lack of comprehensive and substantiated data on complaints, investigations, prosecutions and convictions for acts of torture or ill-treatment inflicted by law enforcement officials, military officers or staff of prisons or psychiatric facilities. It also regrets the lack of comparable data on violence against women, juvenile justice, corporal punishment, and the trafficking of persons, particularly women and children.

The State party should compile the above-mentioned data to allow for an effective assessment of the implementation of the Convention at the national level and to help with the identification of targeted measures to prevent and effectively combat torture, ill-treatment and all forms of violence against women and children. It should also provide statistics on redress, including compensation, and on rehabilitation mechanisms for victims.

Other issues

(29) The Committee encourages the State party to consider making the declarations under articles 21 and 22 of the Convention, thereby recognizing the competence of the Committee to receive and consider inter-State and individual communications.

(30) The State party is encouraged to disseminate widely the report submitted to the Committee, as well as the present concluding observations, in appropriate languages, through official Internet sites, the media and non-governmental organizations.

(31) The Committee requests the State party to provide, by 22 November 2014, information on the follow-up given to the following recommendations: (a) the introduction or strengthening of legal safeguards for detainees; (b) the prompt instigation of impartial and effective investigations; and (c) the initiation of proceedings against suspects and sentencing of perpetrators of acts of torture or ill-treatment (see paragraphs 10, 11 and 12, above). The Committee furthermore requests the additional information on redress and compensation for victims of torture or ill-treatment mentioned in paragraph 18, above.

(32) The Committee invites the State party to submit its next periodic report, which will be its second one, by 22 November 2017. In this respect the Committee invites the State party to agree, by 22 November 2014, to submit that report under the optional procedure whereby the Committee sends the State party a list of issues prior to the submission of its periodic report. The replies to the list of issues will constitute the State party's second periodic report under article 19 of the Convention.

57. Kyrgyzstan

The Committee against Torture considered the second periodic report of Kyrgyzstan (CAT/C/KGZ/2) at its 1192nd and 1195th meetings, held on 12 and 13 November 2013

(CAT/C/SR.1192 and 1195), and adopted the following concluding observations at its 1205th meeting (CAT/C/SR.1205).

A. Introduction

(1) The Committee welcomes the submission of the second report of Kyrgyzstan, in response to the list of issues prior to reporting (CAT/C/KGZ/Q/2). However, the Committee regrets that it was submitted 10 years late, which prevented the Committee from conducting an analysis of the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the State party following the consideration of its initial report in 1999.

(2) The Committee notes with appreciation the participation of a high-level delegation from the State party and the opportunity to engage in a constructive dialogue covering many areas under the Convention.

B. Positive aspects

(3) The Committee welcomes the fact that, since the consideration of the initial report, the State party has ratified or acceded to the following international instruments:

(a) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (22 July 2002);

(b) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (12 February 2003) and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (13 August 2003);

(c) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (29 September 2003);

(d) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (29 December 2008); and

(e) The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (6 December 2010).

(4) The Committee notes the ongoing efforts by the State party to reform its legislation, policies and procedures, including:

(a) The adoption of the new Constitution in 2011;

(b) Amendments to the Criminal Code in 2012 and the Criminal Procedure Code in 2011;

(c) The adoption of three decrees (nos. 40, 70 and 75) by the General Prosecutor's Office in 2011; and

(d) The abolition of the death penalty in 2007.

C. Principal subjects of concern and recommendations

Impunity for, and failure to investigate, widespread acts of torture and ill-treatment

(5) The Committee is deeply concerned about the ongoing and widespread practice of torture and ill-treatment of persons deprived of their liberty, in particular while in police custody to extract confessions. These confirm the findings of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/19/61/Add.2, paras. 37 et seq.), and of the United Nations High Commissioner for Human Rights (A/HRC/20/12, paras. 40–41). While the Kyrgyz delegation acknowledged that torture is practised in the country, and affirmed its commitment to combat it, the

Committee remains seriously concerned about the substantial gap between the legislative framework and its practical implementation, as evidenced partly by the lack of cases during the reporting period in which State officials have been prosecuted, convicted and sentenced to imprisonment for torture (arts. 2, 4, 12 and 16).

(6) The Committee is gravely concerned at the State party's persistent pattern of failure to conduct prompt, impartial and full investigations into the many allegations of torture and ill-treatment and to prosecute alleged perpetrators, which has led to serious underreporting by victims of torture and ill-treatment, and impunity for State officials allegedly responsible (arts. 2, 11, 12, 13 and 16).

In particular, the Committee is concerned about:

(a) The lack of an independent and effective mechanism for receiving complaints and conducting impartial and full investigations into allegations of torture. Serious conflicts of interest appear to prevent existing mechanisms from undertaking effective, impartial investigations into complaints received;

(b) Barriers at the pre-investigation stage, particularly with regard to forensic medical examinations, which in many cases are not carried out promptly following allegations of abuse, are performed by medical professionals who lack independence, and/or are conducted in the presence of other public officials, leading to the failure of the medical personnel to adequately record detainees' injuries, and consequently to investigators' failure to open formal investigations into allegations of torture, for lack of evidence;

(c) The apparent practice by investigators of valuing the testimonies of individuals implicated in torture over those of complainants, and of dismissing complaints summarily; and

(d) The failure of the judiciary to effectively investigate torture allegations raised by criminal defendants and their lawyers in court. Various sources report that judges commonly ignore information alleging the use of torture, including reports from independent medical examinations.

As a matter of urgency, the State party should take immediate and effective measures to prevent acts of torture and ill-treatment throughout the country, including by implementing policies that would eliminate impunity for perpetrators of torture and ill-treatment and ensure prompt, impartial, effective investigations into all allegations of torture and ill-treatment, prosecution of those responsible, and the imposition of appropriate sentences on those convicted. The State party should:

(a) Publicly and unambiguously condemn the use of all forms of torture, warning that any person ordering, committing, instigating, acquiescing to or acting as an accomplice to such acts shall be criminally prosecuted and punished;

(b) Establish an independent and effective mechanism to facilitate the submission of complaints by victims of torture and ill-treatment to public authorities; and ensure that complaint mechanisms are available and that complainants are protected in practice against abuse or intimidation as a consequence of their complaint or any evidence given;

(c) Ensure that all health professionals who encounter signs of torture and ill-treatment are under a legal obligation to document such abuses, in line with the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), that all persons deprived of their liberty are guaranteed timely access to a qualified and independent medical investigator upon their request, and that all medical examinations are carried

out in private; and consider transferring responsibility for oversight of medical staff of detention facilities to the Ministry of Health; and

(d) Ensure that investigations into allegations of torture are not undertaken by or under the authority of the police, but by an independent body, that preliminary enquiries into complaints of torture are undertaken and concluded promptly upon receipt of the complaint, and that official investigations are opened in all cases where there are reasonable grounds to believe that torture was committed; and ensure that officials alleged to be responsible for violations of the Convention are suspended from their duties during such investigations.

(7) The Committee remains seriously concerned by the State party's response to the allegations of torture in individual cases brought to the attention of the Committee, and particularly by the State party's authorities' refusal to carry out full investigations into many allegations of torture on the grounds that preliminary enquiries revealed no basis for opening a full investigation. The Committee is gravely concerned by the case of Azimjan Askarov, an ethnic Uzbek human rights defender prosecuted on criminal charges in connection with the death of a police officer in southern Kyrgyzstan in June 2010, which has been raised by several Special Rapporteurs, including the Special Rapporteur on the situation of human rights defenders (A/HRC/22/47/Add.4, para. 248; A/HRC/19/55/Add.2, para. 212). Mr. Askarov has alleged that he was beaten severely by police on numerous occasions immediately following his detention and throughout the course of the criminal proceedings against him, and that he was subjected to repeated violations of procedural safeguards such as prompt access to a lawyer and to an effective, independent medical examination. The Committee notes that independent forensic medical examinations appear to have substantiated Mr. Askarov's allegations of torture in police custody, and have confirmed resulting injuries including persistent visual loss, traumatic brain injury, and spinal injury. Information before the Committee suggests that Mr. Askarov's complaints of torture have been raised on numerous occasions with the Prosecutor's office, as well as with the Kyrgyz Ombudsman's office, and with Bazar-Korgon District Court, the Appeal Court and the Supreme Court. To date, however, the State party's authorities have declined to open a full investigation into his claims, relying on allegedly coerced statements made by Mr. Askarov while in police custody that he had no complaints. The Committee understands that the State party is presently considering the possibility of further investigating these claims. The Committee is concerned by the State party's refusal to undertake full investigations into allegations of torture regarding other cases raised during the review, including those of Nargiza Turdieva and Dilmurat Khaidarov (arts. 2, 12, 13 and 16).

As a matter of urgency, the State party should: (a) undertake a full, effective and independent investigation into the claims of torture made by Azimjan Askarov; (b) ensure that Azimjan Askarov receives adequate medical care; and (c) review the grounds for his continued detention in light of his allegations. The State party should also ensure that torture claims made by Nargiza Turdieva and Dilmurat Khaidarov are fully, impartially and effectively investigated.

(8) The Committee remains concerned at the lack of full and effective investigations into the numerous allegations that members of the law enforcement bodies committed torture and ill-treatment, arbitrary detention and excessive use of force during and following the inter-ethnic violence in southern Kyrgyzstan in June 2010. The Committee is concerned by reports that investigations, prosecutions, condemnations and sanctions imposed in relation to the June 2010 events were mostly directed against persons of Uzbek origin, as noted by sources including the Committee on the Elimination of Racial Discrimination, in 2013 (CERD/C/KGZ/CO/5-7, paras. 6–7). The Committee further

regrets the lack of information provided by the State party on the outcome of the review of 995 criminal cases relating to the June 2010 violence (arts. 4, 12, 13 and 16).

The State party should take effective measures to ensure that all allegations of torture or ill-treatment, related to the June 2010 violence, by security or law enforcement officials are fully and impartially investigated, and that the officials responsible are prosecuted. In particular, the State party should ensure that:

(a) A thorough and impartial review of 995 criminal cases related to the June 2010 violence is conducted, and, when appropriate, proceedings are reopened in cases in which torture allegations have not been fully investigated or in which serious violations of due process rights have been revealed;

(b) Security or law enforcement officials found responsible are subjected to disciplinary and/or criminal penalties for torture and ill-treatment; and

(c) Allegations of any public official's infliction of, ordering of, or acquiescence to torture or ill-treatment against ethnic Uzbeks is fully and effectively investigated and, as appropriate, prosecuted.

Fundamental legal safeguards

(9) The Committee expresses its serious concern at the State party's failure to afford to all persons deprived of their liberty, especially those held in pretrial detention, all fundamental legal safeguards, as described in the Committee's general comment no. 2 (2007) on implementation of article 2 by States parties (paras. 13–14), from the outset of deprivation of liberty. The Committee is particularly concerned at reports that detainees are frequently denied access to an independent lawyer of their choice, that police officers forcibly extract confessions in the early stages following apprehension, before formal detention or arrest, and that in practice lawyers need to secure special permission from investigators to have access to their clients (arts. 2, 11, 12, 13, 15 and 16).

The State party should ensure that:

(a) All persons deprived of liberty are afforded, in law and in practice, all fundamental legal safeguards from the very outset of their deprivation of liberty, including the rights to prompt access to a lawyer of their choice, to request a medical examination by an independent doctor, to contact family members, to be informed promptly of their rights, including about the charges against them, and to be brought before a judge within 48 hours of their deprivation of liberty;

(b) All persons deprived of their liberty have prompt access to assistance from independent lawyers, and can communicate privately with them;

(c) All detainees, including minors, are included in a central register of persons deprived of liberty, in which relevant information about fundamental safeguards is immediately recorded, and which can be accessed by the lawyers and family members of those detained and others as appropriate; that the State party monitors the provision of safeguards to persons deprived of their liberty, including public officials' compliance with registration requirements; and that any public official who denies fundamental legal safeguards to such detained persons is disciplined or prosecuted.

Definition and criminalization of torture

(10) While welcoming the recent amendment in the Criminal Code on the definition of torture, the Committee regrets that the current definition of torture in article 305(1) of the Criminal Code limits criminal responsibility to public officials, excluding other persons acting in an official capacity. Furthermore, the Committee regrets that the specific offence

of torture is not punishable by appropriate penalties, as required by the Convention. The Committee is also concerned that the statute of limitations applicable to the offence of torture under domestic law may prevent investigation, prosecution and punishment of these non-derogable crimes (arts. 1, 2 and 4).

The State party should continue its efforts to bring its domestic law into accordance with the Convention, inter alia by ensuring that the definition of torture in article 305(1) of the Criminal Code covers all the elements contained in article 1 of the Convention and that acts of torture are punishable by appropriate penalties commensurate with the gravity of the offence, as set out in article 4, paragraph 2 of the Convention. Furthermore, the State party should ensure that the prohibition against torture is absolute and that there is no statute of limitations for acts of torture.

Status of the Convention in the domestic legal order

(11) While welcoming the fact that international treaties are directly applicable in the State party under article 6 of the Constitution, the Committee notes with concern that the Convention has never been directly invoked in domestic courts (CAT/C/KGZ/2, para. 14) (arts. 2 and 10).

The State party should take necessary measures to ensure de facto applicability of the provisions of the Convention in its domestic legal order, inter alia by training the judiciary and law enforcement personnel on the provisions of the Convention.

Independence of the judiciary

(12) While noting the State party's efforts to guarantee the independence of judges, the Committee remains concerned at the reported lack of independence of the judiciary, in particular the process of selecting judges, the attestation procedure for judges, and the requirement for re-evaluation every seven years, as well as the low level of salaries and the uncertain tenure of judges, which may lead to corruption. It is also deeply concerned at reports that corruption in the judiciary significantly contributes to a climate of impunity (art. 2).

The State party should strengthen the independence and impartiality of the judiciary for the performance of its duties in accordance with international standards, notably the Basic Principles on the Independence of the Judiciary, inter alia by guaranteeing judges' security of tenure. The State party should implement the recommendations regarding Kyrgyzstan made by the Special Rapporteur on the independence of judges and lawyers (E/CN.4/2006/52/Add.3).

Coerced confessions

(13) The Committee is seriously concerned at numerous, consistent and credible reports that the use of forced confessions as evidence in courts is widespread. While noting that the use of evidence obtained through unlawful means is prohibited by law, it is deeply concerned that in practice there is a heavy reliance on confessions within the criminal justice system. The Committee is further concerned at reports that judges have frequently declined to act on allegations made by criminal defendants in court, or to allow the introduction into evidence of independent medical reports that would tend to confirm the defendant's claims of torture for the purpose of obtaining a confession. The Committee regrets the lack of information provided by the State party on cases in which judges or prosecutors have initiated investigations into torture claims raised by criminal defendants in court, and is alarmed that no official has been prosecuted and punished for torture even in the single case brought to its attention in which a conviction obtained by torture was excluded from evidence by a court – that of Farrukh Gapiurov, who was acquitted by the Osh Municipal Court of involvement in the June 2010 violence (arts. 2 and 15).

The Committee urges the State party to:

(a) Adopt legislation explicitly prohibiting the use of evidence obtained through torture, in line with article 15 of the Convention, and ensure its implementation;

(b) Ensure that judges and prosecutors initiate investigations and take other appropriate remedial measures ex officio whenever a criminal defendant or his or her lawyer presents reasonable grounds to believe that a confession has been obtained through torture or ill-treatment, and ensure that the perpetrators of such abuses are prosecuted and, upon conviction, punished, including in the case of Farrukh Gapiurov;

(c) Ensure that the findings of independent forensic medical examinations of criminal defendants who allege that they were tortured are considered admissible as evidence in court proceedings and given evidentiary weight equivalent to that given to the reports of State-employed medical professionals, where appropriate.

National human rights institution

(14) The Committee is concerned that the organization and the prerogatives of the Office of the Ombudsman do not comply with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), especially concerning the tenure and selection process for the Ombudsman and lack of independence. The Committee regrets that the Ombudsman (Akyikatchy) Act establishes that, if the annual report is not approved, the Ombudsman may be removed from his or her post (CAT/C/KGZ/2, para. 64). The Committee notes that the State party envisages adopting a draft law to strengthen the Office of the Ombudsman (arts. 2, 11 and 13).

The State party should bring the Office of the Ombudsman into compliance with the Paris Principles, inter alia by ensuring its independence and providing adequate resources for its operation.

National preventive mechanism

(15) While welcoming the establishment of the National Centre of the Kyrgyz Republic for the Prevention of Torture, the Committee remains concerned that it has not yet begun activities as the country's national preventive mechanism, mainly due to the inadequate budget (art. 16).

The State should ensure that: (a) the National Centre for the Prevention of Torture has the necessary financial, human and material resources to fulfil its mandate independently and effectively; and (b) all persons involved in the administration of places of detention are aware of the rights of members of the National Centre for the Prevention of Torture.

Human rights defenders

(16) The Committee expresses serious concern at numerous reports of intimidation, reprisals and threats against human rights defenders, journalists and lawyers, as well as at the absence of information on investigations into such allegations (arts. 2, 12 and 16).

In particular, the Committee is concerned about:

(a) Reports that human rights defenders have been arrested on criminal charges, apparently in retaliation for their work: and trials in which numerous due process violations have been reported, including regarding the aforementioned case of Azimjan Askarov;

(b) The State party's failure to prevent and punish physical attacks against lawyers, perpetrated both inside and outside the courts, as seen in the violent attacks on

Tatyana Tomina as reported by the Special Rapporteur on the situation of human rights defenders (A/HRC/19/55/Add.2, para. 211). Ms. Tomina was reportedly beaten again on 2 April 2013, along with another lawyer, Ulugbek Usmanov, inside the Supreme Court;

(c) Several troubling legislative proposals currently under consideration by Parliament, including a draft law that would provide the authorities with wide discretion to interfere with the internal affairs of national and international non-governmental organizations, and to suspend or liquidate their activities on vague administrative grounds; as well as a draft law that would modify the definition of the crime of treason in a way that could chill civil society provision of information on human rights conditions to international bodies.

In line with the commitment made by the State party in the context of the universal periodic review (A/HRC/15/2, paras. 76.57 and 76.74), the State party should take all necessary steps to:

(a) Ensure that human rights defenders and independent lawyers are protected from intimidation or violence as a result of their activities;

(b) Ensure the prompt, impartial and thorough investigation of all allegations of harassment, torture or ill-treatment of human rights defenders, including Askarov, Tomina, and Usmanov, and prosecute and punish the perpetrators with appropriate penalties;

(c) Consider accepting the request for a visit by the Special Rapporteur on the situation of human rights defenders (A/HRC/22/47/Add.4, para. 250);

(d) Refrain from enacting legislation that would impede the ability of human rights defenders to conduct their activities in line with the provisions of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms; and ensure that no individual or group will be subjected to prosecution in reprisal for cooperating with United Nations or other international, regional, or national human rights entities.

Deaths in custody

(17) The Committee is deeply concerned about reports of deaths in custody or immediately after release, and the authorities' failure to investigate such cases, often despite medical reports revealing marks of beating, as in the case of Bektemir Akunov (A/HRC/7/3/Add.1, para. 121) and the cases of three ethnic Uzbeks raised in the report of the United Nations High Commissioner for Human Rights (A/HRC/20/12, para. 39). The Committee notes the concern raised by the Special Rapporteur on the question of torture that independent investigations launched into deaths in custody are the exception rather than the rule in Kyrgyzstan and that relatives of victims often come under pressure from the police to withdraw their complaints or to settle in order to close the case. The Committee regrets the State party's failure to implement the Human Rights Committee's Views on the case of death in custody referred to in communication No. 1756/2008 (arts. 2, 11, 12 and 16).

The Committee urges the State party to:

(a) Promptly, thoroughly and impartially investigate all incidents of death in custody; and prosecute those responsible for acts of torture, ill-treatment or wilful negligence and punish them with appropriate penalties; and

(b) Ensure independent forensic examinations in all cases of death in custody; permit family members of the deceased to commission independent

autopsies; and ensure that the State party's courts accept the results of such independent autopsies as evidence in criminal and civil cases.

Violence against women, including rape and bride-kidnapping

(18) While noting various initiatives by the authorities to combat violence against women, the Committee remains concerned at (a) reports of widespread violence against women, including domestic violence, trafficking and bride-kidnapping; and (b) the lack of information provided about prosecutions for such violence. The Committee regrets that existing law prohibiting domestic violence and bride-kidnapping is not implemented in practice, mainly due to the lack of a political commitment and appropriate training for law enforcement officials and the judiciary (arts. 2, 12, 13, 14 and 16).

The State party should:

(a) Effectively combat violence against women, inter alia by promptly investigating complaints related to such violence, including domestic violence and bride-kidnapping, and institute criminal proceedings against perpetrators and those aiding and abetting the kidnappings, even in the absence of a formal complaint;

(b) Protect victims of domestic violence, including by establishing appropriate shelters across the country; and

(c) Step up its awareness-raising campaigns to sensitize the population to these problems.

Ill-treatment and torture based on sexual orientation and gender

(19) The Committee is concerned at (a) reports of police harassment, arbitrary arrest, ill-treatment and torture, including through sexual violence, perpetrated against persons on the basis of their sexual orientation or gender identity, including lesbian, gay, bisexual and transgender (LGBT) persons; and (b) the authorities' more general failure to investigate allegations of sexual violence by officials, to punish perpetrators of such violence and to provide effective remedies to victims, as in the case of Ms. Zulhumor Tohtonazarova. Furthermore, it is concerned at the little progress in investigating reports of rape and sexual violence during and after the June 2010 violence (arts. 2, 11 and 16).

The State party should ensure prompt, impartial, and thorough investigations of all allegations of ill-treatment and torture committed by police and detention officials against LGBT persons or others on the basis of their sexual orientation or gender identity, and prosecute and, upon conviction, punish perpetrators with appropriate penalties.

Conditions of detention

(20) While noting some minor improvements in certain detention facilities, both with assistance from international organizations and through the Government's own programmes, the Committee is concerned at the prevalence of extremely harsh living conditions in places of deprivation of liberty, including prison overcrowding, insufficient food and drinking water, lack of ventilation, lack of hygiene, the prevalence of tuberculosis, and poor health care. It is also concerned at the deplorable conditions of inmates sentenced to life imprisonment (A/HRC/19/61/Add.2, para. 69) (arts. 11 and 16).

The State party should intensify efforts to improve the conditions of detention in places of deprivation of liberty, including detention facilities for inmates serving life terms, bringing them into line with international standards, inter alia the Standard Minimum Rules for the Treatment of Prisoners (Economic and Social Council resolutions 663C (XXIV) and 2076 (LXII)).

Violence against children

(21) Although corporal punishment of children is unlawful in schools, the penal system and certain care settings, the Committee is concerned at allegations that a high number of children experience violence, abuse or neglect in the family and some care settings (art. 16).

The State party should explicitly prohibit corporal punishment of children in all settings, including at home and in institutions and alternative care settings, and ensure awareness-raising and public education measures.

Redress, including compensation and rehabilitation

(22) While noting that victims' rights to rehabilitation and compensation are guaranteed in domestic legislation (CAT/C/KGZ/2, paras. 219 et al.), the Committee is concerned at the State party's failure to provide redress, including compensation and rehabilitation, to victims of torture and ill-treatment. The Committee regrets: (a) article 417 of the Criminal Procedure Code which hampers victim's rights to redress from a civil court until a criminal court has convicted the perpetrators; (b) the State party's failure to implement the Views of the Human Rights Committee on several cases relating to torture and ill-treatment, despite article 41(2) of the Constitution which requires a remedy upon the finding by an international body of a violation; and (c) the lack of State-supported specialized rehabilitation services for torture victims, with the result that all available rehabilitation in the State party is provided by a non-governmental organization dependent on outside funding (art. 14).

Noting the Committee's general comment No. 3 (2012) on implementation of article 14 by States parties, the State party should ensure de jure and de facto access to timely and effective redress for all victims of torture and ill-treatment, by:

(a) Adopting and implementing legislation and policies explicitly providing for the right to remedy and reparation for victims of torture and ill-treatment;

(b) Ensuring that effective rehabilitation services and programmes are established in the State that are accessible to all victims without discrimination, and are not dependent upon the victim pursuing judicial remedies;

(c) Taking necessary measures to protect the safety and personal integrity of victims and their families seeking compensation or rehabilitation services;

(d) Complying with the Views of the Human Rights Committee relating to rights to remedy for torture victims.

Refugees and asylum seekers

(23) While noting positive steps, including the amendment of the Refugees Act in 2012, the Committee expresses its concern at reports that several refugees and asylum seekers from a neighbouring country were forcibly or secretly returned and that refugees continue to be at risk of refoulement, or of abduction by security services of the neighbouring country, sometimes in cooperation with Kyrgyz counterparts. The Human Rights Committee found that the extradition by Kyrgyzstan of four Uzbeks, recognized as refugees by the United Nations High Commissioner for Refugees, to Uzbekistan, breached their right to freedom from torture (communication Nos. 1461/2006, 1462/2006, 1476/2006 and 1477/2006). Moreover, the Committee shares the concern raised by the Committee on the Elimination of Racial Discrimination that a discriminatory approach to registration procedures and recognition of refugee status for foreign Uighurs and Uzbeks places them at risk of police harassment and refoulement (CERD/C/KGZ/CO/5-7, para. 17) (art. 3).

The State party should take all necessary measures to ensure the principle of non-refoulement, inter alia by bringing its current procedures and practices into line with

article 3 of the Convention; and to ensure adequate judicial mechanisms for the review of decisions, sufficient legal defence for persons subject to extradition, and effective post-return monitoring arrangements.

Training

(24) While noting various human rights training programmes for public officials and judges, the Committee regrets: (a) the insufficient level of practical training with regard to the provisions of the Convention for law enforcement officers and the judiciary; (b) the lack of specific training to detect signs of torture and ill-treatment for medical personnel dealing with detainees; and (c) the lack of information on the impact of existing training programmes on the prevention of the offences of torture or ill-treatment (art. 10).

The State party should:

(a) Reinforce training programmes on the absolute prohibition of torture and the State party's obligations under the Convention, taking a gender-sensitive approach, for all personnel involved in custody, detention, interrogation and treatment of detainees as well as the judiciary; and

(b) Provide all relevant personnel, especially medical personnel, with training on how to identify signs of torture and ill-treatment and how to use the Istanbul Protocol.

Lack of data

(25) The Committee regrets the lack of comprehensive or disaggregated data on compliance with the State party's obligations under the Convention (arts. 2, 12, 13 and 19).

The State party should compile and provide to the Committee statistical data relevant to the monitoring of the implementation of the Convention at the national level, including the type of bodies engaged in such monitoring, disaggregated, inter alia, by sex, ethnicity, age, crime and geographical location, including information on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, deaths in custody, trafficking, domestic and sexual violence, and the outcomes of all such complaints and cases, including compensation and rehabilitation provided to victims.

(26) The Committee recommends that the State party consider making the declarations under articles 21 and 22 of the Convention.

(27) The Committee invites the State party to ratify United Nations human rights treaties to which it is not yet a party, particularly the International Convention for the Protection of All Persons from Enforced Disappearance and the Convention on the Rights of Persons with Disabilities.

(28) The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

(29) The Committee requests the State party to provide, by 23 November 2014, follow-up information in response to the Committee's recommendations related to (a) ensuring the respect of fundamental legal safeguards; (b) conducting prompt, impartial and effective investigations; and (c) prohibiting the use of evidence obtained through torture, as contained in paragraphs 7, 8, 10 and 14 of the present document.

(30) The State party is invited to submit its next report, which will be the third periodic report, by 23 November 2017. For that purpose, the Committee will, in due course, submit to the State party a list of issues prior to reporting, considering that the State party has accepted to report to the Committee under the optional reporting procedure.

58. Latvia

(1) The Committee against Torture considered the combined third to fifth periodic reports of Latvia (CAT/C/LVA/3-5) at its 1176th and 1179th meetings, held on 31 October and 1 November 2013 (CAT/C/SR.1176 and CAT/C/SR.1179), and adopted the following concluding observations at its 1199th meeting (CAT/C/SR.1199) held on 15 November 2013.

A. Introduction

(2) The Committee expresses its appreciation to the State party for accepting the optional reporting procedure and for submitting its combined third to fifth periodic report in a timely manner by providing replies to the list of issues (CAT/C/LVA/Q/5), which focuses the examination of the report as well as the dialogue with the delegation.

(3) The Committee also appreciates the open and constructive dialogue with the high-level delegation of the State party and the detailed supplementary information provided.

B. Positive aspects

(4) The Committee welcomes the fact that, since the consideration of the second periodic report, the State party has ratified or acceded to the following international instruments:

(a) Optional Protocol to the Convention on the Rights of Persons with Disabilities on 31 August 2010;

(b) The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, on 19 April 2013.

(5) The Committee welcomes the State party's efforts to revise its legislation in areas of relevance to the Convention, including:

(a) Amendments to article 273 of the Criminal Procedure Law concerning the grounds for detention of juveniles, on 12 March 2009;

(b) Entry into force of the new Asylum Law on 14 July 2009;

(c) Amendments to the Law on the Procedures for the Coming into Force and Application of the Criminal Law supplementing the law with article 24.1 on the definition of torture, on 23 December 2009;

(d) Entry into force of the Law on Patients' Rights, which protects the rights of juveniles in particular and provides for a patient's right to claim compensation, on 1 March 2010;

(e) Amendments to the Law on Medical Treatment concerning the actions of medical institutions if patients have been subjected to violence, which entered into force on 1 January 2011;

(f) Amendments to the Law on Enforcement of Sentences concerning the resocialization of prisoners, introduced on 8 August 2011;

(g) Abolition of the death penalty from the Criminal Law, on 1 December 2011.

(6) The Committee also welcomes the efforts of the State party to amend its policies, programmes and administrative measures to give effect to the Convention, including:

(a) Adoption of the basic guidelines on the improvement of the mental health of the population for 2009–2014, on 6 August 2008;

(b) Adoption by the Government of the concept on resocialization of convicted persons sentenced to deprivation of liberty, on 9 January 2009;

(c) Adoption of the basic policy guidelines for the enforcement of prison sentences and detention of juveniles for 2007–2013, on 2 March 2010;

(d) Adoption by the Cabinet of Ministers of the regulation setting out the procedure for providing community service as an alternative to imprisonment, including in the case of minors, on 9 February and 3 August 2010;

(e) Publication by the Office of Citizenship and Migration Affairs of a commentary to the Asylum Law, with a view to improving the quality of the asylum procedure, January 2010.

C. Principal subjects of concern and recommendations

Definition of torture

(7) While taking note of the amendments to the Law on the Procedures for the Coming into Force and Application of the Criminal Law, supplementing the law with article 24.1 which defines torture, and recalling its previous concluding observations (CAT/C/LVA/CO/2, para. 5), the Committee is concerned that the definition of torture does not reflect all of the elements contained in article 1 of the Convention, which may create loopholes for impunity, as outlined in general comment No. 2 (2007) on implementation of article 2 by States parties (art. 1).

The State party should amend its legislation to include a definition of torture in conformity with the Convention, which covers all the elements contained in article 1, including the inflicting of torture on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Torture as a specific criminal offence and the statute of limitations for acts of torture

(8) The Committee is concerned that, since torture is not a separate offence under Criminal Law, the penalties for acts of torture have been incorporated into different articles of the Criminal Law, that are not appropriate punishment for such criminal offences, taking into account their gravity. It is also concerned that acts of torture and attempts to commit torture, as well as acts by persons that constitute complicity or participation in torture, are subject to a statute of limitations of 10 years in most cases, which may result in impunity for perpetrators of such acts (arts. 2 and 4).

The State party should amend its legislation to include torture as a specific offence in the Criminal Law, with appropriate penalties for acts of torture that take into account their grave nature, as set out in article 4 (2) of the Convention. In addition, the State party should ensure that the prohibition against torture is absolute and that there is no statute of limitations for acts of torture, so that acts of torture and attempts to commit torture and acts by persons which constitute complicity or participation in torture can be investigated, prosecuted and punished without time limitations.

Fundamental legal safeguards

(9) The Committee is concerned that persons deprived of their liberty do not enjoy in practice all the fundamental legal safeguards against torture and ill-treatment that should be afforded from the very outset of deprivation of liberty, such as access to a lawyer and an independent doctor and the right to inform a relative or person of their choice from the very outset of their detention. It is also concerned at reports of a shortage of lawyers and that lawyers providing "State-ensured legal aid" are reluctant to do so for lack of appropriate remuneration (arts. 2, 12, 13 and 16).

The State party should:

(a) Take effective measures to guarantee that all detained persons are afforded, by law and in practice, all the fundamental legal safeguards from the outset of their being deprived of liberty, in particular prompt access to a lawyer and, if necessary, to legal aid; that a relative or person of their choice is informed; and access to a medical examination by an independent doctor, if possible a doctor of their choice, in accordance with international standards;

(b) Ensure the implementation of regulation No. 1493 on the types and amount of State-ensured legal aid, the amount of payment and the reimbursable expenses related to the provision of legal aid and the amount of and procedures for payment, adopted by the Cabinet of Ministers on 22 December 2009 in order to increase the number of contracted, sworn legal aid attorneys to provide adequate assistance to all persons requiring State-provided legal aid, including in remote rural areas.

Pretrial detention

(10) While noting the reduction in the number of prisoners and detainees since the adoption of the criminal policy document that came into force on 1 April 2013, the Committee is concerned at information that no amendments were adopted concerning the duration of pretrial detention, including in police custody, during the reporting period. It is also concerned that national law does not provide time limits measured in days or hours, pursuant to which a person may be kept in small police stations (arts. 2, 10 and 16).

The State party should:

(a) Adopt all necessary measures to reduce the duration of pretrial detention and devise alternative measures to incarceration;

(b) Ensure that there is no pretrial detention in police stations and devise alternative, non-custodial measures to incarceration, taking into account the provisions of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) when devising the alternative measures to preventive detention;

(c) Ensure that persons remanded in custody are always promptly transferred to a prison;

(d) Take steps, including of a legislative nature, to ensure that the return of prisoners to police detention facilities is sought and authorized only exceptionally, for specific reasons and for the shortest possible time. Such a return should in each case be subject to the authorization of a prosecutor or judge and should never be carried out by the sole decision of a police investigator;

(e) Establish strict rules concerning the duration of detention in police stations, ensure their effective application by the judiciary and devise alternative measures to incarceration.

Administration of justice

(11) The Committee is concerned at the lack of efficiency of the judicial system, the unjustified slowness of both civil and criminal proceedings and the backlog of cases (art. 2).

The State party should:

(a) Reform the judicial system with a view to enhancing the speed and efficiency of judicial proceedings, in particular with regard to criminal justice;

(b) Take measures to strengthen the judiciary in the performance of its functions and improve further the regime of appointment, promotion and dismissal of judges in line with relevant international standards, including the Basic Principles on the Independence of the Judiciary.

Excessive use of force

(12) The Committee is concerned at allegations of excessive use of force and instances of ill-treatment by law enforcement personnel at the time of apprehension and during investigation in police facilities. It is further concerned at the absence of a data collection system on cases of ill-treatment and at the low number of disciplinary and criminal sanctions. The Committee is also concerned at information that complaints and allegations concerning physical violence and ill-treatment by police officers are examined by the Internal Security Office of the State Police, which is part of the police force, and at the absence of information on the outcome of these investigations and on any compensation to the victims (arts. 2, 10, 12, 13, 14 and 16).

The State party should:

(a) Ensure that all reports of ill-treatment and excessive use of force by law enforcement personnel are investigated promptly, effectively and impartially, both at the disciplinary and the criminal level, by an independent mechanism with no institutional or hierarchical connection between the investigators and the alleged perpetrators;

(b) Ensure that persons suspected of having committed acts of torture or ill-treatment are immediately suspended from their duties and remain so throughout the investigation;

(c) Prosecute persons suspected of physical violence and ill-treatment and, if found guilty, ensure that they are punished in accordance with the gravity of their acts and that their victims are afforded appropriate redress, in accordance with article 14 of the Convention;

(d) Ensure that law enforcement officials are trained in professional techniques and international standards on the use of force and firearms, which minimize any risk of harm to apprehended persons, on the absolute prohibition of torture and ill-treatment and on the liabilities in cases of excessive use of force.

National human rights institution

(13) Recalling its previous concluding observations (para. 6) adopted in November 2007, the Committee is concerned at reports calling into question the independence of the Ombudsman, the scope of his or her mandate and the financial and staffing capacity to fulfil the mandate and workload and carry out the functions of an independent national human rights institution in accordance with the Principles relating to the Status of National Institutions (the Paris Principles) (art. 2).

The State party should establish a national institution for the promotion and protection of human rights, with adequate financial and staffing resources, in full compliance with the Principles relating to the Status of National Institutions (the Paris Principles) and seek accreditation from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

Domestic violence

(14) While noting amendments introducing aggravating circumstances of violence and threat of violence in article 48 of the Criminal Law and recalling its previous concluding observations (para. 20), the Committee remains concerned that domestic violence is not

defined as a specific crime in the Criminal Law and that marital rape is not recognized as a separate criminal offence. It is also concerned at the absence of protection measures, such as restraining orders, against perpetrators of domestic violence and physical abuse, at the inadequate support from the State party in the running of shelters specifically for abused women and the fact that psychosocial and legal rehabilitation services are provided mainly by non-governmental organizations (arts. 2, 12, 13, 14 and 16).

The State party should:

(a) Adopt comprehensive legislation on violence against women that would establish domestic violence and marital rape as specific offences in the Criminal Law;

(b) Ensure that all reports of domestic violence, including sexual violence and violence against children, are registered by the police, that all such incidences of violence are promptly, impartially and effectively investigated and perpetrators prosecuted and, if found guilty, punished in accordance with the gravity of their acts;

(c) Sensitize and train law enforcement personnel in investigating and prosecuting cases of domestic violence;

(d) Ensure that victims of domestic, including sexual, violence benefit from protection, including restraining orders for the perpetrators, and have access to medical and legal services, including psychosocial counselling, to reparation, including rehabilitation, and to safe and adequately funded shelters specifically for abused women, which the State directly runs and supports.

Trafficking in human beings

(15) While welcoming the bilateral agreements on cooperation against trafficking in persons that the State party has concluded with 20 countries and the adoption of the State programme for the prevention of human trafficking, the Committee is concerned that the State party remains a country of origin for human trafficking for purposes of sexual and labour exploitation (arts. 2, 10, 12, 13 and 16).

The State party should:

(a) Take effective measures to prevent human trafficking, such as vigorously enforcing anti-trafficking legislation and enhancing international cooperation, as well as intensifying action against marriages of convenience that may result in human trafficking;

(b) Promptly, effectively and impartially investigate, prosecute and punish trafficking in persons and related practices;

(c) Increase the protection of and provide redress to victims of trafficking, including legal, medical and psychological aid and rehabilitation, including the introduction of specific rehabilitation services for victims of trafficking, adequate shelters and assistance in reporting incidents of trafficking to the police;

(d) Enhance specialized training for the police, prosecutors and judges, migration officers and border police, including on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on effective prevention, investigation, prosecution and punishment of acts of trafficking and conduct nationwide awareness-raising campaigns, including through the media, about the criminal nature of such acts.

Non-citizen residents

(16) While welcoming the significant reduction in the number of so-called "non-citizen residents" from 29 per cent in 1995 to 13 per cent at present and the amendments to the Citizenship Law introduced in May 2013 allowing for a simplified naturalization procedure, the Committee is concerned at the large number of non-citizens residing permanently in the State party (arts. 2 and 16).

The State party should:

(a) Invite non-citizen residents to avail themselves of the simplified naturalization procedure in the Citizenship Law, as amended in May 2013, and facilitate the granting of citizenship to and naturalization and integration of non-citizens;

(b) Enhance efforts to raise the awareness of parents whose children are eligible for naturalization and consider granting automatic citizenship at birth, without previous registration by parents, to the children of non-citizen parents who do not acquire any other nationality, with a view to preventing statelessness;

(c) Consider offering language courses free of charge to all non-citizen residents and stateless persons who wish to apply for Latvian citizenship.

Situation of asylum seekers

(17) The Committee is concerned:

(a) That persons seeking asylum may not enjoy all the procedural guarantees, including access to legal counsel and the right to appeal negative decisions;

(b) That the risk of *refoulement* may exist in cases where appeals of negative decisions under the accelerated asylum procedure may not have a suspensive effect;

(c) That the detention of asylum seekers is not only used as a measure of last resort and that asylum seekers who are minors may be detained starting at the age of 14 (arts. 3 and 16).

The State party should:

(a) Take all necessary measures to abide by its obligations under article 3 of the Convention and refrain from expelling, returning (*refouler*) or extraditing a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture;

(b) Ensure that all persons seeking asylum in the State party, including at its border-crossing points, enjoy all procedural guarantees, including access to legal assistance and interpreters and the right of appeal against negative decisions;

(c) Ensure that decisions concerning asylum, including under the accelerated procedure, can be appealed and have a suspensive effect in order to avoid the risk of *refoulement*;

(d) Use detention of asylum seekers only as a measure of last resort for as short a period as possible, refrain from detaining minors and revise policy in order to bring it in line with the Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum Seekers and Alternatives to Detention of the Office of the United Nations High Commissioner for Refugees.

Training

(18) The Committee is concerned at the absence of specific methodologies to evaluate the effectiveness and impact on a reduction in the number of cases of torture and ill-

treatment of the training and educational programmes on the absolute prohibition of torture and ill-treatment and on the provisions of the Convention for law enforcement personnel, prison staff, border guards, medical personnel, judges and prosecutors. It is also concerned that training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (the Istanbul Protocol) is not provided to all medical professionals dealing with persons deprived of liberty and asylum seekers (art. 10).

The State party should:

(a) Develop specific methodologies to evaluate the effectiveness and impact of training and educational programmes on the absolute prohibition of torture and ill-treatment provided to law enforcement, prison staff, border guards, medical personnel, judges and prosecutors;

(b) Ensure that the Istanbul Protocol is made an essential part of the training for all medical professionals and other public officials involved in work with persons deprived of their liberty and asylum seekers.

Conditions of detention

(19) The Committee is concerned (arts. 11, 13 and 16):

(a) That the material conditions of detention in places of deprivation of liberty and in particular those that are old, continue to fall short of international standards with regard to infrastructure, hygiene and sanitary conditions, living space and regime of activities, in particular for prisoners serving life sentences and remand prisoners;

(b) At serious deficiencies and considerable delays in the provision of medical, psychological and dental health care, especially as the latter is at the expense of the inmates;

(c) At the material conditions in most police detention facilities, including limited or no access to natural light and ventilation, unhygienic cells and inadequate sanitary facilities, which are not in conformity with international standards;

(d) That the Law on the Procedure of Detention on Remand stipulates that the space in multi-occupancy cells should be not less than 3m^2 per person.

The State party should:

(a) Continue to take steps to improve the material conditions in all prisons and police detention centres with regard to infrastructure, hygiene and sanitary conditions, heating, living space and regime of activities, in particular for prisoners serving life sentences and remand prisoners, in accordance with the Standard Minimum Rules for the Treatment of Prisoners;

(b) Ensure the provision of adequate medical, psychological and prompt dental health care for all inmates free of charge;

(c) Ensure that the renovation of existing places of detention continues according to schedule;

(d) Ensure the existence of impartial and independent mechanisms to monitor places of deprivation of liberty, deal with the complaints of inmates about their conditions of detention and provide effective follow-up to such complaints;

(e) Ensure that the space provided should not be less than 4m2 per prisoner in multi-occupancy cells, in accordance with the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Inter-prisoner violence

(20) The Committee is concerned at the persistence of inter-prisoner violence and the lack of investigation of such violence, especially in view of the high number of cases. It is further concerned at reports relating to instances of deaths in custody as a result of violence (arts. 2, 11, 12, 13 and 16).

The State party should:

(a) Enhance steps to reduce inter-prisoner violence, including by strengthening the monitoring and management of vulnerable prisoners and other prisoners at risk;

(b) Continue and enhance the training of prison staff and medical personnel regarding communication with and managing of inmates and on detecting signs of vulnerability;

(c) Strengthen the effectiveness of complaints mechanisms for reporting cases of violence or other abuses and enhance the financial and staffing capacity of the Ombudsman and other independent mechanisms to visit regularly all places of detention;

(d) Promptly, thoroughly and impartially investigate all cases of inter-prisoner violence and deaths in custody, prosecute and punish those found guilty with appropriate penalties and provide redress to victims or their relatives.

Use of restraints in prisons

(21) The Committee is concerned by reports of unjustified use of restraints in prisons, such as the routine handcuffing of prisoners serving life sentences when outside their cells (arts. 2, 11 and 16).

The State party should:

(a) Abolish the routine handcuffing of prisoners serving life sentences;

(b) Ensure that all complaints of violations with regard to handcuffing are promptly, effectively and independently investigated and the persons responsible are held to account.

Redress, including compensation and rehabilitation

(22) The Committee is concerned that there is no explicit provision in domestic legislation that provides for the right of victims of torture and ill-treatment to fair and adequate compensation, including the means for as full rehabilitation as possible, as required by article 14 of the Convention. It is also concerned that specific rehabilitation services have not been established and regrets the lack of data regarding the amount of any compensation awards made by the courts to victims of violations of the Convention and on any treatment and social rehabilitation services provided to victims, including medical and psychosocial rehabilitation (art. 14).

The State party should amend its legislation to include explicit provisions on the right of victims of torture and ill-treatment to redress, including fair and adequate compensation and rehabilitation, in accordance with article 14 of the Convention. It should, in practice, provide all victims of torture or ill-treatment with redress, including fair and adequate compensation, and as full rehabilitation as possible, regardless of whether perpetrators of such acts have been brought to justice. It should allocate the necessary resources for the effective implementation of rehabilitation programmes.

The Committee draws the attention of the State party to its general comment No. 3 (2012) on the implementation of article 14 by States parties, which clarifies the content and scope of the obligations of States parties to provide full redress to victims of torture.

Persons with disabilities

(23) While taking note of the amendments to the Law on Medical Treatment and trends toward deinstitutionalization in the State party, the Committee is concerned at information that disadvantaged or low-income patients accommodated in psycho-neurological medical institutions who are allowed to leave are unable to do so for lack of living space, work and means of subsistence (arts. 2, 11 and 16).

The State party should:

(a) Ensure adequate social conditions, including living space, work and means of subsistence, for disadvantaged or low-income patients accommodated in medical institutions to enable them to leave those institutions;

(b) Establish an independent complaints mechanism and counsel and effectively, promptly and impartially investigate all complaints of ill-treatment of persons with mental and psychosocial disabilities in psychiatric institutions, bring those responsible to justice and provide redress;

(c) Ensure effective legal safeguards for all persons with mental and psychosocial disabilities and comply with the recommendations of the Ombudsman regarding the keeping of records in such a way that a patient's consent is requested both in hospitalizing him or her and determining his or her psychiatric medical treatment in the institutions.

Other issues

(24) The Committee reiterates its recommendation that the State party consider making the declarations under articles 21 and 22 of the Convention.

(25) The Committee invites the State party to consider ratifying the other United Nations human rights treaties to which it is not yet party, namely the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection of All Persons from Enforced Disappearance; the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

(26) The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations in appropriate languages, including Russian, through official websites, the media and non-governmental organizations.

(27) The State party is invited to update its common core document, in accordance with the requirements contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6).

(28) The Committee requests the State party to provide, by 22 November 2014, follow-up information in response to the Committee's recommendations relating to: (a) strengthening legal safeguards for persons deprived of their liberty; (b) conditions of detention; and (c) use of restraints, as contained in paragraphs 9, 19 and 21 respectively of the present document.

(29) The State party is invited to submit its next report, which will be the sixth periodic report, by 22 November 2017. For that purpose, the Committee will, in due course, submit to the State party a list of issues prior to reporting, considering that the State party has accepted to report to the Committee under the optional reporting procedure.

59. Mozambique

(1) The Committee against Torture considered the initial report of Mozambique (CAT/C/MOZ/1) at its 1171st and 1173rd meetings, held on 28 and 29 October 2013 (CAT/C/SR.1171 and 1173), and adopted the following concluding observations at its 1197th meeting, held on 14 November 2013 (CAT/C/SR.1197).

A. Introduction

(2) The Committee welcomes the initial report of Mozambique (CAT/C/MOZ/1). However, the Committee regrets that the report does not fully conform to the Committee's guidelines on the form and content of initial reports (CAT/C/4/Rev.3), and that it was submitted with a 12-year delay, which prevented the Committee from conducting an analysis of the implementation of the Convention in the State party following its accession in 1999.

(3) The Committee is grateful to the State party for the constructive and frank dialogue held with its high-level delegation and the additional information that was provided during the consideration of the report.

B. Positive aspects

(4) The Committee welcomes the State party's ratification of the following international instruments:

(a) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, on 4 November 2008;

(b) The Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict, on 6 March 2003 and 19 October 2004, respectively;

(c) The Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, on 30 January 2012; and

(d) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, on 19 August 2013.

(5) The Committee welcomes the following legislative measures taken by the State party in areas of relevance to the Convention:

(a) The promulgation on 16 November 2004 (rev. 2007) of the Constitution, which establishes the overall framework for the protection of human rights, notably in Title III (Fundamental rights, duties and freedoms). Article 40 of the Constitution provides that "All citizens shall have the right to life and to physical and moral integrity and they shall not be subjected to torture or to cruel or inhuman treatment" and that "There shall be no death penalty in the Republic of Mozambique";

(b) The adoption of Act No. 6/2008 on preventing and combating trafficking in persons, especially women and children, on 9 July 2008; and

(c) The adoption of Act No. 29/2009 on domestic violence practised against women, on 29 September 2009.

(6) The Committee further welcomes the establishment of the National Human Rights Commission of Mozambique in September 2012, pursuant to Act No. 33/2009 of 22 December 2009.

C. Principal subjects of concern and recommendations

Definition of torture

(7) While taking note of the existence of a draft penal code that would introduce a definition of the crime of torture into domestic law, the Committee regrets that torture, as defined in article 1 of the Convention, is still not codified as a specific offence under the Penal Code, but as an aggravating circumstance for certain criminal offences. As for the State party's argument that other similar criminal offences are defined in its domestic legislation (CAT/C/MOZ/1, para. 59), the Committee draws attention to its general comment No. 2 (2007) on the implementation of article 2 by States parties, which emphasizes the preventive value of codifying torture as a distinct offence (para. 11) (arts. 1 and 4).

The State party should specifically criminalize torture in its domestic legislation and adopt a definition of torture covering all the elements contained in article 1 of the Convention. The State party should also ensure that such offences are punishable by appropriate penalties which take into account their grave nature, in accordance with article 4, paragraph 2, of the Convention.

Fundamental legal safeguards

(8) The Committee notes with concern that arrested and detained persons are not always afforded all fundamental legal safeguards from the very outset of their deprivation of liberty. According to information before the Committee, arrested and detained persons are often not adequately informed about their rights and are frequently denied access to a lawyer. In addition, detainees are not given a medical examination upon arrival at police stations and the police fail to bring suspects before a judge within 48 hours of arrest. The information also documents instances of arbitrary arrest and detention, especially of disadvantaged people – young, unemployed or self-employed men in particular. The Committee is also concerned at the fact that contracted legal aid lawyers who work alongside salaried staff at the Instituto de Patrocínio e Assistência Jurídica (Institute for Legal Representation and Assistance) charge a fee for their services, as the delegation confirmed during its dialogue with the Committee (art. 2).

The State party should take effective measures to ensure that, in law and in practice, persons who are arrested have the benefit of all fundamental legal safeguards from the very outset of their deprivation of liberty. These safeguards include the right to be informed of the reasons for their arrest, access to a lawyer, the right to contact family members or other persons of their choice, the right to have an independent medical examination performed without delay and the right to be brought before a judge within 48 hours of arrest. The State party should also take the necessary measures to provide an effective free legal aid system, especially for indigent criminal suspects.

Extrajudicial executions and excessive use of force

(9) The Committee is gravely concerned about allegations of unlawful killings, including extrajudicial executions, by members of the police during the period under review. It is also concerned at allegations that the police resort to excessive and sometimes lethal force, especially when apprehending suspects and controlling demonstrations. While noting the information provided by the State party on several highly publicized cases, such as the *Costa do Sol* case, the Committee regrets that it has not received additional information on investigations, prosecutions, convictions and sentences imposed in cases

involving excessive use of force and extrajudicial executions that took place during the period under review (arts. 2, 12 and 16).

The State party should take steps to investigate promptly, effectively and impartially all allegations of the involvement of members of law enforcement agencies in extrajudicial executions and other unlawful killings. It should also investigate without delay allegations of instances of excessive use of force, especially lethal force, by members of the police, bring those responsible for such acts to justice and provide the victims with redress.

The Committee urges the State party to implement effective measures to prevent law enforcement officers from committing acts such as extrajudicial killings and using excessive force by ensuring that they comply with the Convention, the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990). The provisions of these instruments should be integrated into the new Police Disciplinary Regulation. In particular, the State party should provide adequate training for its law enforcement officials, who should receive clear instructions on the use of force and firearms in line with international standards, and be informed of the liabilities they incur if they make unnecessary or excessive use of force.

National human rights institution

(10) The Committee welcomes the establishment of the National Human Rights Commission in 2012, although it regrets the lack of information regarding the resources and budget the State party has allocated for its effective functioning (art. 2).

The State party should ensure that the National Human Rights Commission has the financial, human and material resources it needs to execute its mandate effectively on a fully independent basis, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). The Committee further recommends that the National Human Rights Commission apply for accreditation to the Sub-committee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

Access to justice and independence of the judiciary

(11) The Committee takes note of the adoption of an integrated strategic plan of the justice sector and the information provided by the delegation regarding judicial salaries and remuneration. However, it remains concerned about the low number of magistrates, the backlog of cases in the courts and reports of "a lack of respect for the presumption of innocence lengthy trials and the inadequate implementation of the principle of equality before the law", as described on 10 December 2010 by the Special Rapporteur on the independence of judges and lawyers in her preliminary conclusions and observations on her visit to Mozambique (art. 2).

The State party should ensure the effective functioning of the justice system and guarantee access to justice for all victims of torture and cruel, inhuman or degrading treatment. It should take further steps to ensure the independence and impartiality of the judiciary in the performance of its functions, in particular by implementing the recommendations of the Special Rapporteur on the independence of judges and lawyers (A/HRC/17/30/Add.2, paras. 118–123).

Non-refoulement and access to a fair and expeditious asylum procedure

(12) The Committee expresses concern about reports of excessive delays in the determination of refugee status. It also regrets the lack of information provided by the State

party on the number of cases of refoulement, extradition and expulsion carried out during the reporting period and on the number of instances and type of cases in which it has offered and/or accepted diplomatic assurances or guarantees (art. 3).

The State party should take the necessary steps, in cooperation with the Office of the United Nations High Commissioner for Refugees (UNHCR), to review its refugee status determination procedures so as to reduce the backlog of asylum applications.

Jurisdiction over acts of torture

(13) While noting that article 67 of the Constitution establishes the principles governing extraditions, the Committee is concerned at the lack of clarity regarding the existence of the necessary legislative measures establishing the State party's jurisdiction over acts of torture (arts. 5, 6, 7 and 8).

The State party should ensure that its domestic legislation permits the establishment of jurisdiction over acts of torture, in accordance with article 5 of the Convention. Domestic legislation should include provision to bring criminal proceedings, under article 7, against foreign nationals who have committed acts of torture outside the territory of the State party, who are present in its territory and have not been extradited.

Training

(14) The Committee takes note of the information provided by the State party on the training courses for judges, magistrates and other public officials that are taught at the Centre for Legal and Judicial Training. However, it regrets the scant information available on the evaluation of such courses and their effectiveness in reducing the incidence of torture and ill-treatment. The Committee is also concerned at the lack of specific training provided to law enforcement officials, judges, prosecutors, forensic doctors and medical personnel dealing with detained persons on how to detect and document physical and psychological sequelae of torture and other cruel, inhuman or degrading treatment or punishment (art. 10).

The State party should:

(a) Provide mandatory training programmes in order to ensure that all public officials, in particular members of the police and prison staff, are fully aware of the provisions of the Convention, that breaches are not tolerated but are investigated and perpetrators brought to trial;

(b) Assess the effectiveness and impact of training courses on the incidence of torture and ill-treatment; and

(c) Provide training on the use of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) for all relevant personnel, including medical personnel.

Conditions of detention in prisons and police stations

(15) While acknowledging the steps taken by the State party to improve conditions in detention centres, including the construction of two new penitentiaries and the allocation of additional resources, the Committee remains concerned at the extremely high levels of overcrowding and the harsh conditions prevailing in detention facilities, including holding cells in police stations. According to the information provided by the State party's delegation, 15,430 inmates in the country's prisons were being held in facilities built to house 7,804. Furthermore, the State party's initial report acknowledges the existence of deficiencies in the prison system, such as dilapidated infrastructure, insufficient water

supply and sanitation facilities, the shortage and poor quality of food and the prevalence of infectious diseases (para. 140). The Committee regrets that it has not received the information it requested on the incidence of inter-prisoner violence. The Committee is also concerned at reports from non-governmental sources of prolonged pretrial detention beyond the statutory limits prescribed by law and continued detention after the expiry of sentences (arts. 11 and 16).

The State party should continue its efforts to improve prison conditions and to reduce overcrowding. In particular, it should:

(a) Take the necessary measures to ensure that the basic needs of persons deprived of their liberty are met with regard to sanitation, medical care, food and water, in accordance with the Standard Minimum Rules for the Treatment of Prisoners;

(b) Set up a system for monitoring places of detention on a regular basis with a view to ensuring that conditions of detention in the country's prisons are compatible with the Convention and other international human rights standards;

(c) Increase its efforts to reduce prison overcrowding, in particular by instituting alternatives to custodial sentences in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);

(d) Take steps to prevent inter-prisoner violence and investigate all such incidents so that the suspected perpetrators may be brought to trial and victims may be protected; and

(e) Ensure, in law and in practice, that pretrial detention is not unduly prolonged and that inmates are not detained beyond the expiry of their sentence.

Juvenile justice

(16) The Committee is concerned at reports that pretrial detention is frequently applied to juveniles and that deprivation of liberty is not used as a measure of last resort for them. Despite the existence of youth sections in two of the country's main prisons, the Committee remains concerned about the placement of juvenile offenders and adult detainees in the same facilities, especially as it cannot be guaranteed that there will be no contact whatsoever between them (arts. 11 and 16).

The State party should increase its efforts to improve the juvenile justice system in accordance with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules). In particular, the State party should ensure that detention pending trial is used for juveniles only as a measure of last resort and for the shortest possible period of time. It should also ensure that sufficient facilities are available so that all juveniles in conflict with the law are held separately from adults.

Conditions in psychiatric hospitals

(17) While taking into account the information provided during the dialogue about mental health services in Mozambique, the Committee regrets that little information was supplied concerning the conditions and legal safeguards for persons placed in involuntary treatment in psychiatric facilities. In this regard, the Committee is concerned at the delegation's statement that involuntary admissions in psychiatric hospitals are not statistically recorded (art. 16).

The Committee recommends that the State party take all necessary measures to ensure that persons in involuntary treatment have access to complaint mechanisms.

The State party should ensure that all cases of forced internment in mental health-care institutions are properly and duly registered. The Committee requests the State party to provide information on conditions for persons in psychiatric hospitals.

Prompt, thorough and impartial investigations

(18) The Committee expresses concern at reports of persistent impunity for police officers and prison officials who torture or ill-treat arrested and detained persons. The Committee notes that, according to the information provided by the State party's delegation, 50 cases of torture reached the sentencing stage during the period under review, with sentences ranging between 6 months' and 27 years' imprisonment. Nonetheless, the State party was unable to provide comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment (arts. 2, 11, 12, 13 and 16).

The State party should:

(a) Take appropriate measures to ensure that all allegations of torture or ill-treatment are promptly, thoroughly and impartially investigated, perpetrators are duly prosecuted and, if found guilty, sentenced to penalties that take into account the grave nature of their acts;

(b) Ensure that investigations into allegations of torture or ill-treatment are conducted by an independent body that is not under the authority of the police;

(c) Establish an independent complaints system for all persons deprived of their liberty; and

(d) Unambiguously reaffirm the absolute prohibition of torture, publicly condemn practices of torture and issue a clear warning that anyone committing such acts or otherwise complicit or participating in torture will be held personally responsible before the law for those acts and will be subject to criminal prosecution and appropriate penalties.

Deaths in custody

(19) The Committee notes that, despite the request it made to the State party's delegation to provide information on cases of death in custody that had occurred during the period under review, no information has been received on this subject (arts. 2, 11 and 16).

The State party should take measures to ensure that all instances of death in custody are promptly investigated and that those found responsible for deaths in custody that result from torture, ill-treatment or wilful negligence are convicted and adequately punished.

Redress, including compensation and rehabilitation

(20) While noting the content of article 58 of the Constitution (Right to compensation and State responsibility) and the existence of several institutional mechanisms to claim redress for human rights violations, the Committee is concerned at reports that victims of torture and ill-treatment hardly ever receive redress, including adequate compensation and rehabilitation. In this regard, the Committee regrets that the State party provided insufficient information on redress and compensation measures, including means of rehabilitation, that have been ordered by the courts or other State bodies and actually provided to victims of torture or their families since the entry into force of the Convention in the State party (art. 14).

The State party should take the necessary steps to ensure that victims of torture and ill-treatment receive redress, including fair and adequate compensation and the means for as full a rehabilitation as possible. The Committee draws the State party's

attention to its general comment No. 3 (2012) on the implementation of article 14 by States parties, in which it elaborates on the nature and scope of States parties' obligations to provide full redress to victims of torture.

Coerced confessions

(21) The Committee is concerned at reports that a number of detainees have alleged that they were forced to sign confession documents without understanding the documents or being aware of their content. While taking note of the constitutional safeguards establishing the inadmissibility of evidence obtained through torture, the Committee expresses concern at the lack of information on decisions taken by the Mozambican courts to refuse as evidence confessions that were obtained under torture (art. 15).

The State party must adopt effective measures to guarantee that coerced confessions or statements are inadmissible in practice, except when invoked against a person accused of torture as evidence that the statement was made. The State party should also ensure that law enforcement officials, judges and lawyers receive training in how to detect and investigate cases in which confessions are obtained under torture.

The Committee requests the State party to include in its next report information on any specific jurisprudence excluding statements obtained as a result of torture and on any cases in which officials have been prosecuted and punished for extracting a confession under torture.

Lynching

(22) While taking note of the delegation's statement that the number of cases of lynching has begun to decrease recently, the Committee remains concern at the persistence of this phenomenon. It also regrets that it has not received the information it requested on the outcome of investigations, related criminal proceedings and punishment of perpetrators (arts. 2, 12 and 16).

The State party should continue to pursue its efforts to prevent, investigate, prosecute and punish lynchings, including by continuing to conduct awareness-raising campaigns in communities.

Violence against women and children, including domestic violence

(23) While welcoming the information provided by the State party on measures taken to combat domestic violence (see para. 5 (c) of the present concluding observations), the Committee remains concerned about the high prevalence of domestic violence in the country. The Committee also notes with concern that the age of statutory rape of a minor is under 12 years (art. 394 of the Penal Code); that article 392 of the Penal Code includes virginity and seduction as prerequisites to define the crime of *estupro*; and that, pursuant to article 400 of the Penal Code, a person accused of a crime of rape who marries the victim is not subjected to pretrial detention (arts. 2 and 16).

The State party should ensure that all cases of violence against women are thoroughly investigated, perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that victims obtain redress, including fair and adequate compensation.

The State party should complete the process of amending the Penal Code with a view to bringing the provisions criminalizing various forms of sexual violence and abuse into line with its obligations under international human rights law relating to women and children.

Violence and sexual abuse against girls in schools

(24) The Committee is seriously concerned about violence and sexual abuse against girls in schools by teachers and male classmates. According to information before the

Committee, very few cases are reported, even fewer are appropriately prosecuted and the institutional response to the problem remains limited (arts. 2 and 16).

The State party should strengthen its efforts to eradicate violence and sexual abuse against girls in schools and implement all necessary protective measures, in particular by:

(a) Taking all measures necessary to investigate, prosecute and appropriately punish those found guilty of such acts, and providing the victims with redress;

(b) Making resources available for prevention and protection programmes to eliminate the persistent pattern of violence and sexual abuse against children in schools;

(c) Making complaints mechanisms available to victims and their families;

(d) Strengthening awareness-raising and mandatory in-service training programmes on the subject for teaching staff; and

(e) Guaranteeing victims full access to health services specialized in family planning and the prevention and diagnosis of sexually transmitted diseases. The State party should ensure that victims obtain redress, including fair and adequate compensation, and the fullest possible rehabilitation.

Harmful traditional practices

(25) The Committee is aware of the efforts made by the State party to prevent early marriages. However, it remains concerned at the persistence of this and other harmful traditional practices, such as forced marriage, polygamy, adulthood initiation rites and child debt bondage. The Committee is also concerned at reports of corporal punishment (whipping) inflicted by some traditional authorities. Furthermore, it regrets the lack of information on the steps taken to ensure that customary law in Mozambique is not incompatible with the State party's obligations under the Convention (art. 16).

The State party should:

(a) Strengthen its efforts to prevent and combat harmful traditional practices, particularly in rural areas, and ensure that such acts are investigated and the alleged perpetrators prosecuted and, if convicted, punished with appropriate sanctions;

(b) Provide victims with legal, medical, psychological and rehabilitative services and compensation, and create the conditions for them to report complaints without fear of reprisal; and

(c) Provide judges, prosecutors, law enforcement officials and traditional authorities with training on the strict application of the relevant legislation criminalizing harmful traditional practices and other forms of violence against women and children.

In general, the State party should ensure that its customary law and practices are compatible with its human rights obligations, particularly those under the Convention. In its next periodic report, the State party should provide information on the hierarchy between traditional practices and codified law, especially with regard to forms of discrimination against women and children.

Human trafficking

(26) The Committee takes note of the efforts made by the State party to prevent and combat human trafficking. However, it is concerned at reports of internal and cross-border

human trafficking for the purpose of sexual exploitation or forced labour, as well as at the information provided by the delegation on trafficking in organs. The Committee is also concerned at the lack of statistics in the State party's report on, inter alia, the number of prosecutions, convictions and sentences of perpetrators of trafficking (arts. 2, 12 and 16).

The State party should:

(a) Intensify its efforts to prevent and combat trafficking in human beings, including by implementing the 2008 anti-trafficking legislation (see para. 5 (b) of the present concluding observations) and providing protection for victims, including shelters and psychosocial assistance;

(b) Conduct prompt, impartial investigations into cases of human trafficking, ensure that those found guilty of such crimes are punished with penalties appropriate to the nature of their crimes, and guarantee that all victims of such acts obtain redress; and

(c) Conduct nationwide awareness-raising campaigns and provide specialized training on victim identification and investigation for labour inspectors and law enforcement officials, including the Women and Child Victim Assistance Units established by the National Police.

Corporal punishment

(27) While recognizing that corporal punishment has been abolished as a penalty for crime and that it is prohibited in penal institutions, the Committee is concerned that it is not explicitly prohibited in the home, schools and all care settings (art. 16).

The Committee recommends that the State party prohibit the corporal punishment of children in all settings, conduct public awareness-raising campaigns about its harmful effects, and promote positive non-violent forms of discipline as an alternative to corporal punishment.

Data collection

(28) The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment perpetrated by law enforcement and prison personnel, as well as on deaths in custody, extrajudicial executions, gender-based violence, trafficking, lynching and criminal conduct related to harmful traditional practices.

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment, deaths in custody, extrajudicial executions, enforced disappearances, gender-based violence, human trafficking, lynching, criminal conduct related to harmful traditional practices, as well as on means of redress, including compensation and rehabilitation, provided to victims.

Other issues

(29) The Committee recommends that the State party ratify the Optional Protocol to the Convention. It also recommends that the State party make the declarations provided for in articles 21 and 22 of the Convention in order to recognize the competence of the Committee to receive and consider communications.

(30) The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, namely, the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol thereto, the Optional Protocol to the International Covenant on Civil and Political Rights and the International Convention for

the Protection of All Persons from Enforced Disappearance. The Committee also invites the State party to withdraw its reservations to the Convention relating to the Status of Refugees (1951). In addition, the State party should consider becoming a party to the Convention relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961).

(31) The State party is requested to disseminate widely the report it submitted to the Committee and the Committee's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

(32) The State party is invited to submit its common core document, in accordance with the requirements of the common core document contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6).

(33) The Committee requests the State party to provide, by 22 November 2014, follow-up information in response to the Committee's recommendations related to (a) ensuring or strengthening legal safeguards for persons in detention; (b) conducting prompt, impartial and effective investigations into cases of the involvement of members of law enforcement agencies in extrajudicial executions and other unlawful killings; and (c) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 8, 9 and 18 of the present concluding observations. In addition, the Committee requests follow-up information on remedies and redress to the victims of torture and ill-treatment, as contained in paragraph 20 of the present concluding observations.

(34) The State party is invited to submit its next report, which will be the second periodic report, by 22 November 2017. For that purpose, the Committee invites the State party to agree, by 22 November 2014, to report under its optional reporting procedure, which entails the transmittal, by the Committee to the State party, of a list of issues prior to the submission of the report. The State party's response to this list of issues will constitute, under article 19 of the Convention, its next periodic report.

60. Poland

(1) The Committee against Torture considered the combined fifth and sixth periodic reports of Poland (CAT/C/POL/5-6) at its 1174th and 1177th meetings, held on 30 and 31 October 2013 (CAT/C/SR.1174 and CAT/C/SR.1177), and adopted the following concluding observations at its 1202nd meeting (CAT/C/SR.1202) held on 19 November 2013.

A. Introduction

(2) The Committee expresses its appreciation to the State party for accepting the optional reporting procedure and for submitting its combined fifth and sixth periodic reports in a timely manner by providing replies to the list of issues (CAT/C/POL/Q/5-6), which focuses the examination of the report as well as the dialogue with the delegation.

(3) The Committee appreciates the open and constructive dialogue with the high-level delegation of the State party and the detailed supplementary information provided.

B. Positive aspects

(4) The Committee welcomes the State party's ratification or accession, since the consideration of the fourth periodic report, to the following international instruments:

(a) The Convention on the Rights of Persons with Disabilities, on 25 September 2012; and

(b) The Council of Europe Convention on Action against Trafficking in Human Beings, on 1 March 2009.

(5) The Committee welcomes the State party's efforts to revise its legislation in areas of relevance to the Convention, including:

(a) Amendments to the Penal Code in September 2013 extending from one to three years the maximum period within which compensation claims can be brought for moral and financial losses suffered during pretrial detention;

(b) Amendments to the Penal Code, the Code of Criminal Procedure, the Executive Penal Code and the Domestic Violence Act in August 2010 extending protection to victims of domestic violence, in particular women and children;

(c) Amendment to the Executive Penal Code in June 2010 enabling convicted persons sentenced to deprivation of liberty to apply for parole once they have served at least half their sentence;

(d) Amendments to the Penal Code in May 2010 introducing a definition of trafficking in human beings;

(e) Amendment to the Prosecution Authority Act in March 2010 separating the offices of the Minister of Justice and the Public Prosecutor General, providing the prosecution authority with greater independence from political influence; and

(f) Introduction of the Prison Service Act in 2010 incorporating the obligation to respect the rights of persons deprived of their liberty.

(6) The Committee also welcomes the efforts of the State party to amend its policies, programmes and administrative measures to give effect to the Convention, including:

(a) The adoption in 2013 of the National Action Plan against Trafficking in Human Beings for 2013–2015;

(b) The establishment in 2013 of the Council for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance at the Council of Ministers;

(c) The adoption in 2008 of the Plan of Action of the Police for the period 2008–2009, which provides specialist training for police officers on combating trafficking in human beings;

(d) The establishment in 2008 of the Office of the Government Plenipotentiary for Equal Treatment; and

(e) The adoption of the National Programme for the Prevention of Domestic Violence 2006–2016.

C. Principal subjects of concern and recommendations

Definition of torture

(7) The Committee regrets that, despite its previous recommendations in this regard (A/55/44, paras. 85–95 and CAT/C/POL/CO/4, para. 6), the State party still maintains its position on not incorporating the provisions of the Convention — the definition of torture including all the elements of article 1 and the provision of a specific offence of torture in accordance with article 4, paragraph 2, of the Convention — into domestic law. The Committee is seriously concerned that the other provisions of the Penal Code that are "applied in cases of torture" do not reflect the gravity of the crime of torture and therefore do not provide for commensurate punishment for the perpetrators (arts. 1 and 4).

The Committee recommends that the State party take effective legislative measures to include torture as a separate and specific crime in its legislation and to adopt a definition of torture that covers all the elements contained in article 1 of the Convention. The State party should ensure that penalties for torture are

commensurate with the gravity of the crime in accordance with article 4, paragraph 2, of the Convention. In this regard, the Committee draws attention to its general comment no. 2 (2007) on the implementation of article 2 by States parties, which states that serious discrepancies between the Convention's definition and that incorporated into domestic law create actual or potential loopholes for impunity (para. 9).

Fundamental legal safeguards

(8) The Committee welcomes the Act of 27 September 2013 amending the Code of Criminal Procedure to provide the accused and the defence lawyer with access to case files in pretrial proceedings. However, the Committee is concerned that certain restrictions still remain on fundamental legal safeguards for persons detained by the police, particularly regarding access to a lawyer from the outset of detention. It is also concerned that, under article 1 of the Executive Penal Code, the prison authorities reserve the right to be present at all meetings between the detainee and his or her defence counsel, and to monitor their telephone communications and correspondence. Furthermore, the Committee remains concerned at the lack of an appropriate system of legal aid in Poland (arts. 2 and 16).

The Committee recommends that the State party take effective measures to guarantee that all persons deprived of their liberty are afforded, in law and in practice, all the fundamental legal safeguards from the outset of deprivation of liberty, including the right to have prompt access to an independent lawyer and, if necessary, to legal aid in accordance with international standards. It further recommends that the State party take the necessary measures to ensure the confidentiality of lawyer-client meetings and communications via telephone and correspondence.

Pretrial detention

(9) The Committee welcomes the amendment of 24 October 2008 to the Code of Criminal Procedure, which narrows down the justification for extending the period of pretrial detention. However, the Committee is concerned at reports indicating that, in practice, the courts do not strictly follow the legislation and often grant extensions with meagre justification, even beyond the established two years (arts. 2, 14 and 16).

The Committee recommends that the State party ensure that pretrial detention is used as an exception and applied for a limited period of time. In particular, it recommends that the State party take measures to put a stop to the practice of extending pretrial detention beyond the maximum period prescribed by law. It should also consider replacing pretrial detention with non-custodial penalties and alternatives to detention, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules). The Committee further recommends that the State party ensure that redress and compensation are provided to anyone who becomes a victim of unjustified prolonged pretrial detention.

Rendition and secret detention programme

(10) The Committee is concerned about the lengthy delays in the investigation process into the alleged complicity of the State party in the Central Intelligence Agency rendition and secret detention programmes between 2001 and 2008, which allegedly involved torture and ill-treatment of persons suspected of involvement in terrorism-related crimes. It is also concerned about the secrecy surrounding the investigation and the failure to ensure accountability in these cases (arts. 2, 3, 12 and 13).

The Committee urges the State party to complete the investigation into allegations of its involvement in the Central Intelligence Agency rendition and secret detention programmes between 2001 and 2008 within a reasonable time and to ensure that persons involved in the alleged crimes of torture and ill-treatment are held accountable. It also recommends that the State party inform the public, ensure its

investigation process is transparent, and cooperate fully with the European Court of Human Rights on the Central Intelligence Agency rendition and secret detention cases against Poland.

Complaints procedure

(11) The Committee is concerned that the amendments of 7 January 2012 to the Criminal Enforcement Code establish strict criteria for the substantiation of complaints from persons deprived of their liberty. As a result, most of the complaints are considered unfounded and unjustified and, in practice, the right to complain is not therefore guaranteed.

The Committee recommends that the State party take all necessary measures to ensure that the right of detainees to complain can be fully exercised, including by:

(a) Doing away with criteria for the substantiation of complaints of torture and ill-treatment;

(b) Providing persons deprived of their liberty with legal representation to file complaints; and

(c) Ensuring that all complaints are promptly, effectively and impartially investigated.

Furthermore, the Committee recommends that the State party collect statistical data, disaggregated by crime, ethnicity, age and sex, on complaints concerning torture and ill-treatment allegedly committed by prisons authorities and law enforcement officials, and on the related investigations, prosecutions, and penal or disciplinary sanctions.

Non-refoulement and extradition

(12) The Committee is concerned that foreigners can be expelled from the State party without having their expulsion decision reviewed by an independent and impartial mechanism. In addition, the Committee is concerned that the State party has not been respecting the principle of non-refoulement as it has sometimes refused to recognize a foreigner's refugee status as the sole reason to refuse extradition to a country where his or her life or personal integrity would be threatened (arts. 3 and 16).

The Committee recommends that the State party ensure that it complies fully with its obligations under article 3 of the Convention and that individuals under the State party's jurisdiction receive appropriate consideration by the competent authorities and are guaranteed fair treatment at all stages of proceedings, including an opportunity for effective and impartial review by an independent decision mechanism on expulsion, return or extradition, with suspensive effect. It also recommends that the State party fulfil its non-refoulement obligations and guarantee the right to appeal the issuance of an extradition warrant where there are substantial grounds for believing that a person would be at risk of being subjected to torture.

Protection of asylum seekers

(13) The Committee welcomes the proposed amendments to the Aliens Act of 2003, which introduce alternatives to detention and give more categories of persons the right to family reunification. However, it remains concerned that under the current legislation asylum seekers, including children, are detained in guarded centres in prison-like conditions prior to expulsion. It is also concerned that insufficient legal assistance is provided to asylum seekers, especially those in detention centres (arts. 3, 10 and 11).

The Committee recommends that the State Party refrain from detaining asylum-seekers, including children, and guarantee them — including those who may face detention — access to independent, qualified and free legal advice and representation,

in order to ensure that the protection needs of asylum seekers, refugees and other persons in need of international protection are effectively recognized.

(14) The Committee is concerned about the lack of a mechanism in the State party to identify vulnerable asylum seekers who are victims of torture and the insufficient provision for their specific needs during the refugee status determination process (arts. 3, 10, 11 and 16).

The Committee recommends that the State Party take all necessary measures to ensure the identification of vulnerable asylum seekers who are victims of torture and provide them with the support they require, including treatment and counselling. Furthermore, all relevant personnel, including medical personnel, should receive specific training on how to identify signs of torture and ill-treatment. To this end, the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) should be further disseminated.

Electrical discharge weapons

(15) The Committee notes that the legislation of 9 April 2010 on the Border Guard provides for border guards to use electrical stunning devices, and that the State party considers the use of these devices (such as tasers) to be less lethal than that of firearms. However, the Committee remains concerned that the use of electrical stunning devices may contravene the Convention and, in some cases, even cause death (arts. 2 and 16).

The State party should ensure that the use of electrical discharge weapons is exclusively limited to extreme situations — where there is a real and immediate threat to life or risk of serious injury — and that these weapons are used only by trained law enforcement personnel as a substitute for lethal weapons. The State party should revise the regulations governing the use of such weapons with a view to establishing a high threshold for their use and expressly prohibiting their use on children and pregnant women. The Committee is of the view that the use of electrical discharge weapons should be subject to the principles of necessity and proportionality and that they should not be included in the regular equipment of custodial staff in prisons or any other place of deprivation of liberty. The Committee urges the State party to provide detailed instructions and training to law enforcement personnel who are entitled to use electric discharge weapons, and to strictly monitor and supervise their use.

The Optional Protocol and a national preventive mechanism

(16) The Committee notes that in 2008, the State party entrusted the Office of the Ombudsman with carrying out the functions of a national preventive mechanism. The Committee regrets that the resources allocated to that Office prevent it from carrying out that mandate effectively (art. 2).

In the light of the Optional Protocol to the Convention and in keeping with the guidelines on national preventive mechanisms (CAT/OP/12/5, paras. 7, 8 and 16), the Committee recommends that the State party ensure that the national preventive mechanism is endowed with sufficient resources to discharge its mandate effectively and on a fully independent basis.

Training

(17) The Committee welcomes the wide range of educational programmes currently in place for law enforcement officials, prisons staff, border guards and medical personnel, including training on the Istanbul Protocol. However, the Committee is concerned that it is

the training institutions themselves that assess the courses and that there is no evaluation of their practical impact on the incidence of torture and ill-treatment (art. 10).

The Committee recommends that the State party develop specific methodologies to guarantee more objective and comprehensive evaluation of the training and education courses on the absolute prohibition of torture and ill-treatment that are provided to law enforcement and medical personnel, judges, prosecutors and persons working with refugees, migrants and asylum seekers.

Investigations and legal proceedings

(18) The Committee is concerned at reports that the police use illegal methods and abuse their power during interrogations, and that few criminal proceedings are conducted into such allegations, the majority of cases being discontinued by the prosecution authorities. It is also concerned that lengthy court proceedings have created a backlog of cases in the court system. Furthermore, while noting the statistics provided on convictions under articles 231 (abuse of power), 246 (obtaining testimony using force) and 247 (tormenting a person deprived of liberty) of the Penal Code, the Committee regrets the lack of information provided on the number of complaints filed, criminal proceedings brought, persons acquitted and the length of sentences handed down in relation to these crimes (arts. 2, 12, 13 and 16).

The Committee recommends that the State party:

(a) Ensure that all reports of torture or ill-treatment are investigated promptly, effectively and impartially;

(b) Promptly undertake an effective and impartial investigation on its own initiative whenever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed;

(c) Prosecute persons suspected of having committed torture or ill-treatment and, if they are found guilty, ensure that they receive sentences that are commensurate with the gravity of their acts and that the victims are afforded appropriate redress;

(d) Improve the functioning of the judicial system and take measures to reduce the backlog of cases in its courts; and

(e) Provide full statistics on crimes related to torture and ill-treatment, including on the number of complaints filed, criminal proceedings brought, persons acquitted and sentences handed down.

Conditions of detention in prisons

(19) The Committee welcomes the introduction in 2009 of the system of electronic monitoring and takes note that the State party has indicated that its prisons are occupied at 96.4 per cent of their total capacity. However, the Committee shares the concern of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment that this assessment is based on the legal standard of 3 square meters per person, which in some cases can be reduced to 2 square meters per person. This is not compatible with the European standard of at least 4 square meters per person. The Committee against Torture is particularly concerned at reports that approximately 40,000 convicts are awaiting enforcement of their punishment and some 12,000 Polish prisoners are expected to be returned from other European Union countries. The Committee therefore considers that prison overcrowding in the State party has not yet been resolved (arts. 2, 11 and 16).

The Committee urges the State party to take the necessary steps to ensure that prison conditions are at least in keeping with the Standard Minimum Rules for the Treatment of Prisoners and, in particular, to:

(a) Relieve overcrowding in the prison system by using non-custodial measures in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules); and

(b) Take measures, including increasing prison capacity, to comply with the European standard of a minimum of four square meters of living space for each detainee.

(20) The Committee is concerned at the prevalence of violence among prison inmates, which has not decreased in the last three years, and at the lack of protection afforded to certain types of prisoners. The Committee is also concerned that N status inmates (dangerous inmates) are often kept in worse conditions than others for long periods of time and that their status is not regularly reviewed (arts. 2, 11 and 16).

The Committee recommends that the State party take all necessary measures to ensure the safety and security of prison inmates by enforcing the classification of inmates under article 82 (1) of the Criminal Enforcement Code. It also recommends that the conditions of detention of N status inmates (dangerous inmates) are improved and their status reviewed regularly in order to facilitate their rehabilitation.

Redress and compensation

(21) The Committee is concerned at the information provided by the State party indicating that, between 2005 and 2010, there were no final rulings by the State Treasury to remedy damages arising from the offence of abuse. It is also concerned that no data has been provided about any compensation granted in 2011 and 2012 (art. 14).

The Committee urges the State party to take immediate legal and other measures to ensure that victims of torture and ill-treatment obtain redress and have an enforceable right to fair and adequate compensation, including the means for as full a rehabilitation as possible. The Committee requests the State party to provide information on the redress and compensation provided to victims of torture and ill-treatment, especially since 2011.

Domestic violence

(22) The Committee welcomes the establishment in 2011 of the National Emergency Service for Victims of Domestic Violence "Blue Line", but regrets that it is not operational 24 hours a day. While noting the 2005 law on the prevention of domestic violence and article 207 of the Penal Code concerning the offence of abuse of close family members, the Committee is concerned that domestic violence is not a separate crime in the Penal Code (arts. 2, 12, 13, 14 and 16).

The Committee recommends that the State party:

(a) Define and introduce domestic violence and marital rape as specific criminal offences in its Penal Code, with appropriate sanctions;

(b) Ensure the effective implementation of the National Programme for the Prevention of Domestic Violence 2006–2016 and regularly assess its results;

(c) Establish an effective and independent complaints mechanism for victims of domestic violence;

(d) Ensure that all allegations of domestic violence, including sexual violence and violence against children, are registered by the police and that all allegations of domestic violence are promptly, impartially and effectively investigated and the perpetrators prosecuted and punished; and

(e) Ensure that victims of domestic violence benefit from protection, including restraining orders, and have access to medical and legal services, including counselling, safe and adequately funded shelters, and redress, including rehabilitation.

Abortion

(23) The Committee is concerned about restrictions on access to abortion, especially for victims of rape, due to the refusal of some physicians and clinics to perform legal operations on the basis of conscientious objection. This leads women to resort to clandestine, often unsafe abortions with all the health risks they entail (arts. 2 and 16).

The Committee recommends that the State party ensure that women, especially victims of rape, who voluntarily decide to terminate their pregnancy have access to safe, legal abortions. In accordance with the 2012 World Health Organization technical and policy guidance on safe abortion, the State party should ensure that the exercise of conscientious objection does not prevent individuals from accessing services to which they are legally entitled. The State party should also implement a legal and/or policy framework that enables women to access abortion where the medical procedure is permitted under the law.

Trafficking in human beings

(24) While welcoming the amendments to the Penal Code introducing a definition of trafficking in human beings and several policy measures in the area, the Committee is concerned at reports that the State party remains a source, transit and destination country for human trafficking, especially for the purpose of forced labour (arts. 2, 10, 12, 13, 14 and 16).

The Committee recommends that the State party fully implement the United Nations Convention against Transnational Organized Crime and take measures to:

(a) Enforce domestic anti-trafficking laws and policies, take effective measures to prevent human trafficking and increase protection for victims of trafficking;

(b) Promptly, effectively and impartially investigate, prosecute and punish the crime of trafficking in persons and related practices;

(c) Provide redress to victims of trafficking, including legal, medical and psychological aid and rehabilitation, as well as adequate shelters and assistance in reporting incidents of trafficking to the police;

(d) Prevent the return of trafficked persons to their countries of origin where there are substantial grounds to believe that they would be in danger of torture; and

(e) Enhance international cooperation with regard to preventing and punishing trafficking.

Vulnerable groups

(25) The Committee notes the adoption of the Equal Treatment Act in 2010 and the provisions of the Penal Code prohibiting hate crimes (arts. 119, 256 and 257), but considers that neither the Act nor the Penal Code provide adequate and specific protection against discrimination based on sexual orientation, disability or age. It is concerned at the

prevalence of racial violence and other acts of racial abuse targeting persons of Arab, Asian and African origin, and manifestations of anti-Semitism. It is also concerned at the significant rise in manifestations of hate speech and intolerance directed at lesbian, gay, bisexual and transgender people and the persistent discrimination against members of the Roma community (arts. 2, 11 and 16).

The Committee recommends that the State party incorporate offences in its Penal Code to ensure that hate crimes and acts of discrimination and violence that target persons on the basis of their sexual orientation, disability or age are punished accordingly. It also urges the State party to take all necessary measures to combat discrimination and violence against persons of Arab, Asian and African origin, lesbian, gay, bisexual and transgender people and persons belonging to the Roma community and to take effective measures to prevent all manifestations of anti-Semitism. Moreover, the State party should continue to be vigilant in ensuring that the relevant existing legal and administrative measures are strictly observed and that training curricula and administrative directives constantly remind staff that such acts will not be tolerated and will be sanctioned accordingly. The Committee refers the State party to its general comment no. 2 (2007) on the implementation of article 2 by States parties, section V: "Protection for individuals and groups made vulnerable by discrimination or marginalization".

Data collection

(26) While welcoming the data provided in a number of areas relevant to the Convention, the Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions, convictions and sentences in cases of torture and ill-treatment perpetrated by law enforcement and prison personnel (arts. 2, 4, 12, 13, 14 and 16).

The State party should compile statistical data relevant to the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions, convictions and sentences in cases of torture and ill-treatment and on means of redress, including compensation and rehabilitation, provided to the victims.

Other issues

(27) The Committee invites the State party to consider ratifying the other United Nations human rights treaties to which it is not yet party, namely the International Convention for the Protection of All Persons from Enforced Disappearance; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. It also invites the State party to consider ratifying the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

(28) The State party is requested to disseminate widely the report it submitted to the Committee and the Committee's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

(29) The Committee requests the State party to provide, by 22 November 2014, follow-up information in response to the Committee's recommendations related to (a) strengthening legal safeguards for persons who are deprived of their liberty, (b) conducting prompt, impartial and effective investigations into all reports of torture or ill-treatment, and (c) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 8 and 18 of the present concluding observations. In addition, the Committee requests follow-up information on remedies and redress provided to victims of

torture and ill-treatment, as contained in paragraph 21, and on protection for asylum seekers, as contained in paragraph 13 of the present concluding observations.

(30) The State party is invited to submit its next report, which will be the seventh periodic report, by 22 November 2017. For that purpose, the Committee will, in due course, submit to the State party a list of issues prior to reporting, given that the State party has agreed to report to the Committee under the optional reporting procedure.

61. Portugal

(1) The Committee against Torture considered the combined fifth and sixth periodic reports of Portugal (CAT/C/PRT/5-6) at its 1186th and 1189th meetings, held on 7 and 8 November 2013 (CAT/C/SR.1186 and 1189), and adopted at its 1204th meeting, held on 20 November 2013 (CAT/C/SR.1204), the following concluding observations.

A. Introduction

(2) The Committee expresses its appreciation to the State party for accepting the optional reporting procedure and for having submitted its combined fifth and sixth periodic reports in a timely manner thereunder, as it improves the cooperation between the State party and the Committee and focuses the examination of the report as well as the dialogue with the delegation.

(3) The Committee appreciates the open and constructive dialogue with the State party's high-level multisectoral delegation, as well as the additional information and explanations provided to the Committee.

B. Positive aspects

(4) The Committee welcomes the ratification by the State party of the following international instruments:

(a) The Convention on the Rights of Persons with Disabilities and its Optional Protocol, on 23 September 2009;

(b) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 15 January 2013;

(c) The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, on 28 January 2013; and

(d) The Optional Protocol to the Convention on the Rights of the Child on a communications procedure, on 24 September 2013.

(5) The Committee welcomes the State party's ongoing efforts to revise its legislation in order to give effect to the Committee's recommendations and to enhance the implementation of the Convention, including the adoption of:

(a) Act No. 27/2008 on asylum;

(b) Act No. 229/2008, setting up the Observatory on Trafficking in Human Beings;

(c) Act No. 49/2008, approving the Law on the Organization of Criminal Investigation;

(d) Act No. 115/2009, establishing the Code on the Execution of Sentences and Measures Involving Deprivation of Liberty, and Decree-Law No. 51/2011, establishing the General Regulation for Prison Facilities, which significantly increased judicial control of compliance with measures of deprivation of liberty;

(e) Act No. 104/2009 on compensation to victims of violent crimes and domestic violence, and Act No. 112/2009 on the legal regime applicable to the prevention of domestic violence and to the protection of and assistance for its victims; and

(f) Act No. 113/2009 on protection measures for minors.

(6) The Committee also welcomes the adoption of the following administrative and other measures:

(a) The appointment of the Ombudsman as the national preventive mechanism, in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 20 May 2013;

(b) Order No. 12786/2009 of 19 May 2009, regulating the conditions of detention in judicial police facilities and in the courts and public prosecution services;

(c) The Order of the Director-General for Prison Services on the Regulation on the Use of Coercive Measures, of 3 September 2009; and

(d) The creation of the National Network of Educational Guardianship Centres, in 2008.

C. Principal subjects of concern and recommendations

Definition of torture

(7) While noting the State party's position that the definition of torture in article 243 of the Criminal Code is sufficiently broad to cover discrimination among the purposes for inflicting torture, the Committee observes that the domestic courts have never applied this article to situations in which torture was inflicted for reasons based on discrimination. The Committee regrets, therefore, that despite its previous concluding observations (CAT/C/PRT/CO/4, para. 6), the State party has not yet made a specific reference to discrimination in the definition of torture set out in the Criminal Code (arts. 1 and 4).

The Committee reiterates its earlier recommendation (CAT/C/PRT/CO/4, para. 6) and calls on the State party to reconsider amending article 243 of the Criminal Code to explicitly include discrimination among the purposes for inflicting torture, in strict conformity with article 1 of the Convention. The Committee draws attention to paragraph 9 of its general comment No. 2 (2008) on the implementation of article 2 by States parties, which indicates that discrepancies between the Convention's definition and that incorporated into domestic law create potential loopholes for impunity.

Fundamental safeguards

(8) The Committee regrets that, despite its previous concluding observations (CAT/C/PRT/CO/4, para. 7), the State party has not taken steps to guarantee that the time spent in detention for identification purposes (maximum 6 hours) is deducted from the total period of police custody (48 hours), particularly in the light of the explanations provided by the State party that detention for identification purposes can be used whenever there are sufficient grounds to believe that the person might have perpetrated a crime. The Committee is concerned that persons detained for identification purposes and suspected of a crime might not be afforded, in practice, the same safeguards as other detained persons under the regular procedure during this six-hour period. The Committee bears in mind, in this regard, that there have been instances in which detained persons have not been informed of their rights from the outset of the detention. The Committee also notes that the right to access to a lawyer promptly upon detention is not effective in practice for those who cannot afford a private lawyer, since access to an ex officio lawyer is guaranteed only at the detention hearing before the judge (arts. 2, 11, and 12).

The State party should:

(a) Amend the Code of Criminal Procedure to ensure that detention starts at the outset of deprivation of liberty and that the time spent in custody for identification purposes is considered part of the 48-hour period within which a detained person must be brought before a judge;

(b) Ensure that suspects are informed of and are able to exercise their rights at the very moment of their deprivation of liberty, and are informed of the reasons for their detention;

(c) Guarantee access to an ex officio lawyer, including consultations in private, as from the moment of deprivation of liberty and during interviews with law enforcement officials;

(d) Ensure that compliance with the legal safeguards by all public officials is regularly monitored and that those who do not comply with these safeguards are properly sanctioned.

Prompt, effective and impartial investigations

(9) The Committee regrets the lack of data concerning criminal investigations into, and prosecutions and sanctions for, the crime of torture and ill-treatment (art. 243 of the Criminal Code) during the period covered by the State party's report. The Committee is also concerned at the lack of clarification on the competence of the internal and external inspection services of each branch of police and prison services to carry out investigations into alleged acts of torture and ill-treatment, and on how these inspection services relate to the Public Prosecutor's Office when they are conducting criminal and disciplinary investigations in parallel. As regards the information provided on disciplinary proceedings from 2008 to 2010, the Committee notes with concern the limited number of punishments imposed in cases of ill-treatment by police and prison officers, as well as the large number of cases closed due to lack of evidence, even where allegations of ill-treatment by police forces and by prison staff have been documented by monitoring bodies. The Committee is concerned at information indicating that, with regard to prisoners alleging ill-treatment, a full medical examination out of the hearing and sight of prison officers does not always take place, and that injuries observed upon admission or sustained in prison thereafter are not properly recorded (arts. 2, 12, 13 and 16).

The State party should:

(a) Ensure that all reports of torture or ill-treatment are investigated promptly, effectively and impartially by appropriate independent bodies at the criminal level, irrespective of disciplinary investigations;

(b) Ensure that persons suspected of having committed acts of torture or ill-treatment are immediately suspended from their duties and remain so throughout the investigation;

(c) Prosecute persons suspected of having committed torture or ill-treatment and, if they are found guilty, ensure that they receive sentences that are commensurate with the gravity of their acts and that their victims are afforded appropriate redress;

(d) Ensure that all medical examinations of prisoners are conducted out of the hearing and, whenever the security situation allows, out of the sight of prison officers, and that medical records are made available to the prisoner concerned and his lawyer upon request; and

(e) Ensure that injuries observed during the medical screening of prisoners upon admission or thereafter by medical staff are fully recorded, including information on the consistency between the allegations made and the injuries observed. Whenever injuries are indicative of ill-treatment, a report should be promptly sent by the medical staff to the supervisory judge, the prosecutor and the prison inspection services.

Complaints mechanisms

(10) The Committee notes the different internal and external inspection services of the police and prison administration competent to receive complaints and carry out disciplinary investigations on ill-treatment and the lack of clarity this may create when lodging a complaint. As regards criminal complaints, the Committee is also concerned by instances in which the police have refused to provide proof of the registered complaint to the person submitting it (arts. 12, 13 and 16).

The State party should establish a central mechanism to receive complaints of torture or ill-treatment, and should ensure that such a mechanism is accessible to all places of detention, especially prisons. Individuals alleging ill-treatment should be able to know exactly to whom they should address their complaint and should be duly informed of the action taken on their complaint. The State party should also ensure that the complainant is protected against all ill-treatment or intimidation that may arise as a consequence of his complaint. A centralized register of complaints of torture and ill-treatment should be kept that includes information on the corresponding investigations, trials and criminal or disciplinary penalties imposed. The existing inspection bodies, including the supervisory judge and the Ombudsman, should be provided with the resources necessary to strengthen their monitoring functions, including in forensic psychiatric hospitals.

Conditions of detention

(11) While acknowledging the State party's efforts to increase the capacity of penal institutions, the Committee remains concerned at the current overpopulation of 115 per cent. The Committee takes into account, in this regard, that about 20 per cent of the prison population is in pretrial detention, and regrets the lack of information on the average pretrial detention time. The Committee regrets, furthermore, that prison facilities, such as the psychiatric hospital at Santa Cruz do Bispo Prison or the Lisbon Central Prison, continue to operate in deplorable conditions. The Committee also notes with concern that the placement of prisoners in high security units is, in practice, routinely prolonged without informing the prisoners of the reasons for an extension. The Committee expresses its concern at the high rates of deaths in custody, especially suicide, among inmates, the insufficient capacity of in-patient psychiatric wards to accommodate prisoners with serious mental illnesses, and the lack of staff and rehabilitative activities in forensic psychiatric hospitals, as well as the use of restraints (arts. 2, 11 and 16).

The State party should intensify its efforts to bring the conditions of detention in places of deprivation of liberty into line with the Standard Minimum Rules for the Treatment of Prisoners, in particular by:

(a) Stepping up its efforts to reduce overcrowding, particularly through the wider application of non-custodial measures as an alternative to imprisonment, in the light of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);

(b) Avoiding long periods of pretrial detention and ensuring that pretrial detainees receive a fair trial without undue delay;

(c) Continuing its efforts to improve and expand prison facilities in order to remodel those facilities that do not meet international standards, in particular Lisbon Central Prison and the psychiatric hospital at Santa Cruz do Bispo Prison;

(d) Ensuring: (i) that all cases of death and suicide in custody are effectively investigated; (ii) that the Directorate-General for Prisons enhances monitoring and detection of at-risk detainees and takes preventive measures regarding the risk of suicide and inter-prisoner violence, including by increasing prison staff and installing video cameras; and (iii) that research continues to be undertaken on the impact of the current programmes to prevent suicide and drug use, with a view to increasing their efficiency;

(e) Ensuring that the decisions on the placement of prisoners in security units, and the extension thereof, are reasoned and communicated to those affected, and that they are subject to appeal;

(f) Increasing the capacity of in-patient psychiatric wards and providing full access to mental health-care services within all prison facilities; and

(g) Increasing the medical staff and rehabilitation activities in all forensic psychiatric hospitals and preventing the use of restraints as much as possible or applying them as a measure of last resort when all other alternatives for control have failed, and never as a punishment, for the shortest possible time, under strict medical supervision and after being duly recorded.

Solitary confinement

(12) While acknowledging the overall positive impact of Act No. 115/2009 and Decree-Law No. 51/2011 (para. 5 (d) above) on the prison system, the Committee remains concerned by article 105 of the Act, which allows solitary confinement to be imposed as a disciplinary punishment for up to 30 days, even to juveniles between the ages of 16 and 18 in conflict with the law. The Committee also notes with concern that provisional isolation of up to 30 days may be imposed on a prisoner pending the imposition of solitary confinement, which amounts de facto to an extended informal punishment of the prisoner (arts. 2, 11 and 16).

The Committee urges the State party to:

(a) Revise its legislation in order to ensure that solitary confinement remains a measure of last resort, imposed for as short a time as possible, under strict supervision and judicial review. The State party should establish clear and specific criteria for decisions on isolation. The practice of renewing and, as such, prolonging disciplinary sanctions of solitary confinement should be strictly prohibited;

(b) Ensure that solitary confinement is never applied to juveniles in conflict with the law or to persons with psychosocial disabilities;

(c) Reduce the maximum duration of provisional isolation and deduct the time spent therein from the maximum period of solitary confinement;

(d) Ensure that the detainee's physical and mental condition is regularly monitored by qualified medical personnel throughout the period of solitary confinement; and

(e) Increase the level of meaningful social contact for detainees while in solitary confinement.

Rendition flights

(13) While welcoming the criminal investigation undertaken into the State party's alleged involvement in extraordinary renditions in the context of its international cooperation in countering terrorism, the Committee notes the State party's clarification in the State report that the investigation has been closed on the grounds of insufficient evidence, despite reports on the State party's alleged cooperation in a rendition and secret detention programme (arts. 2, 3, 12 and 16).

The Committee encourages the State party to continue its investigations, if further information comes to light, into allegations of the State party's involvement in a rendition programme and of the use of the State party's airports and airspace by flights involved in "extraordinary rendition", and bring to light the facts surrounding these allegations. The Committee reminds the State party that the transfer and refoulement of persons, when there are substantial grounds for believing that these persons would be at risk of being subjected to torture, is in itself a violation of article 3 of the Convention.

Reception conditions of asylum seekers

(14) The Committee notes that the number of asylum applications has increased in recent years, from 140 applications in 2009 to 369 applications received to date in 2013. It also notes that the Refugee Reception Centre, designed to accommodate asylum seekers in the admissibility phase, during which there is no entitlement to work, suffers from overcrowding (arts. 3, 11 and 16).

The State party should ensure the timely processing of refugee claims, both in the special procedure at the border as well as in the regular procedure, in order to reduce the waiting time of asylum seekers in reception centres. The State party should also take action to increase the accommodation capacity of the reception centres, in order to alleviate the current overcrowding, and ensure that adequate medical care, as well as adequate supplies of, inter alia, food, water and personal hygiene items, are always provided.

Electrical discharge weapons

(15) The Committee recalls its previous recommendation (CAT/C/PRT/CO/4, para. 14) and expresses its deep concern at instances where electrical discharge weapons ("Taser X26") were disproportionally used by police and prison officials, for example, in 2010 by the Prison Security Intervention Group at Paços de Ferreira prison (arts. 2 and 16).

The State party should ensure that electrical discharge weapons are used exclusively in extreme and limited situations where there is a real and immediate threat to life or risk of serious injury, as a substitute for lethal weapons, and by trained law enforcement personnel only. The Committee is of the view that electrical discharge weapons should not be part of the equipment of custodial staff in prisons or any other place of deprivation of liberty. The Committee urges the State party to strictly monitor and supervise their use.

Redress, including compensation and rehabilitation

(16) While welcoming the adoption of Act No. 104/2009 (para. 5 (e) above) and the establishment of the Commission for the Protection of Crime Victims (CPVC), which grants compensation to and provides social support and rehabilitation for victims of violent crimes and of domestic violence in advance of the outcome of criminal proceedings, the Committee regrets the lack of information on compensation awarded by the CPVC or the courts of the State party to the victims of torture or ill-treatment (art. 14).

The Committee draws the attention of the State party to the recently adopted general comment No. 3 (2012) on article 14 of the Convention, in which the Committee explains the content and scope of the obligations of States parties to provide full redress to victims of torture. The State party should compile, and provide the Committee with, information on:

(a) Redress and compensation measures ordered by the CPVC or the courts and provided to victims of torture or ill-treatment or to their families. This information should include the number of requests made and the number of requests granted, as well as the amounts ordered and actually provided in each case; and

(b) Any ongoing rehabilitation programmes for victims of torture and ill-treatment. The State party should also allocate adequate resources to effectively implement such programmes and inform the Committee thereof.

Domestic violence

(17) The Committee welcomes the legislative and other measures aimed at preventing and combating domestic violence (para. 5 (e) above), including the criminalization of domestic violence and corporal punishment of children under article 152 of the Criminal Code and the adoption of the Fourth National Action Plan against Domestic Violence (2011–2013). However, the Committee recalls its previous concern (CAT/C/PRT/CO/4, para. 15) regarding the high prevalence of this phenomenon, including the high number of deaths, and notes the insufficient data provided regarding prosecutions, type of sanctions imposed and reparation in these cases (arts. 2, 12, 13 and 16).

The State party should continue its efforts to combat domestic violence, inter alia, by:

(a) Ensuring the effective implementation of the legal framework and the Fourth National Action Plan against Domestic Violence, including by promptly, effectively and impartially investigating all incidents of violence against women and prosecuting those responsible;

(b) Continuing to conduct public awareness-raising campaigns to fight domestic violence and gender stereotypes, particularly among young people, and increasing training for law enforcement officers, judges, lawyers and social workers;

(c) Undertaking research into the impact of preventive measures and criminal justice responses to counter domestic violence, with a view to increasing their efficiency; and

(d) Compiling and providing the Committee with disaggregated data on the number of complaints, investigations, prosecutions and sentences handed down for acts of domestic violence, on the provision of redress to the victims and on the difficulties experienced in preventing such acts.

Ill-treatment of Roma and other minorities

(18) While welcoming the measures for the integration of immigrants and the recent adoption of the Strategy for Inclusion of the Roma Communities (2013-2020), the Committee is concerned at reports of discrimination and abuses against Roma and other minorities by the police, including allegations of excessive use of force against various members of the Roma community, including minors, during an arrest in Regalde, Vila Verde Municipality, in 2012. The Committee is further concerned at reports that mention the perceived lack of confidence of victims in the judicial system, which may result in underreporting (arts. 2, 12, 13 and 16).

The State party should:

(a) Take effective measures to ensure the protection of members of the Roma community, including through enhanced monitoring, and to encourage reporting of any ill-treatment, for example through the Special Programme on Proximity Policing. All acts of violence and racial discrimination should be promptly, impartially and effectively investigated, the alleged perpetrators brought to justice, and redress provided to the victims;

(b) Publicly condemn attacks against Roma, ethnic and other minorities, and increase the number of awareness-raising campaigns, including among the police, promoting tolerance and respect for diversity; and

(c) Enhance training for law enforcement officials on combating crimes against minorities and encourage the recruitment of members of the Roma community into the police force.

Trafficking in persons

(19) While welcoming the measures to address trafficking in persons (para. 5 (b) above), including the Second National Plan for the Fight against Trafficking in Human Beings, the Committee notes the very few prosecutions of offenders of such crimes (arts. 2, 12, 13, 14 and 16).

The State party should continue to adopt the necessary measures to:

(a) Vigorously enforce the legal framework to prevent and promptly, thoroughly and impartially investigate, prosecute and punish trafficking in persons;

(b) Continue to conduct nationwide awareness-raising campaigns and training for law enforcement officers, judges, prosecutors, migration officials and border police, including on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol); and

(c) Undertake research into the impact of preventive measures and criminal justice responses to counter trafficking in human beings and on the difficulties experienced in preventing such acts.

Training

(20) While taking note of the various human rights training programmes for police forces, the Committee notes that the State party has not provided information on training on the provisions of the Convention for prison staff, immigration officials and other State agents involved in the prevention of torture. The Committee also notes that the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) is used in the training of forensic doctors but has not been incorporated into the training programme of other public officials, including other health professionals. The Committee further noted the lack of information on the effectiveness and impact of those training programmes in reducing the number of cases of torture and ill-treatment (art. 11).

The State party should:

(a) Further develop and strengthen training programmes to ensure that all officials, in particular judges and law enforcement, prison and immigration officers, are aware of the provisions of the Convention;

(b) Provide training on the Istanbul Protocol for medical personnel and other officials involved in dealing with detainees and asylum seekers in the investigation and documentation of cases of torture; and

(c) Assess the effectiveness and impact of training programmes on the prevention and absolute prohibition of torture and ill-treatment.

Data collection

(21) The Committee regrets the absence of comprehensive and disaggregated data on complaints of, investigations into, and prosecutions and convictions for cases of torture and ill-treatment by law-enforcement, security, military and prison personnel, at the criminal and disciplinary levels, as well as on crimes involving discrimination, trafficking, domestic and sexual violence, and female genital mutilation.

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data, at the criminal and disciplinary levels, on complaints of, investigations into, and prosecutions and convictions for cases of torture and ill-treatment, trafficking, domestic and sexual violence, and female genital mutilation, as well as on means of redress, including compensation and rehabilitation, provided to the victims.

Other issues

(22) The Committee invites the State party to ratify the International Convention for the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

(23) The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in all appropriate languages, through official websites, the media and non-governmental organizations.

(24) The Committee requests the State party to provide, by 22 November 2014, follow-up information in response to the Committee's recommendations related to: (a) ensuring or strengthening legal safeguards for persons detained; (b) conducting prompt, impartial and effective investigations; and (c) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraph 8 (b), (c) and paragraph 9 (a), (c) of the present concluding observations. In addition, the Committee requests follow-up information on domestic violence and ill-treatment of Roma and other minorities, as contained in paragraphs 17 and 18 of the present document.

(25) The State party is invited to submit its next report, which will be the seventh periodic report, by 22 November 2017. For that purpose, the Committee will, in due course, submit to the State party a list of issues prior to reporting, considering that the State party has accepted to report to the Committee under the optional reporting procedure.

62. **Uzbekistan**

(1) The Committee against Torture considered the fourth periodic report of Uzbekistan (CAT/C/UZB/4) at its 1172nd and 1175th meetings, held on 29 and 30 October 2013 (CAT/C/SR.1172 and CAT/C/SR.1175), and adopted the following concluding observations at its 1196th and 1197th meetings (CAT/C/SR.1196 and 1197) held on 14 November 2013.

A. Introduction

(2) The Committee welcomes the timely submission of the fourth periodic report of Uzbekistan and the extensive responses to the list of issues (CAT/C/UZB/Q/4/Add.2) by the State party and the representatives who participated in the oral review.

(3) The Committee also appreciates the high-level delegation of the State party and the additional oral and written information provided by the representatives of the State party to questions raised and concerns expressed during the consideration of the report.

B. Positive aspects

(4) The Committee welcomes the ratification, inter alia, of international instruments, including:

(a) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography;

(b) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;

(c) The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;

(d) International Labour Organization (ILO) Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour;

(e) ILO Convention No. 138 (1976) concerning Minimum Age for Admission to Employment;

(f) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

(5) The Committee also welcomes the entry into force, inter alia, of national legislation, including:

(a) The law on guarantees of the rights of the child of 7 January 2008;

(b) The law on fighting human trafficking of 17 April 2008;

(c) The law on prevention of child neglect and juvenile delinquency of 29 September 2010;

(d) The law on amendments and additions to the code of the Republic of Uzbekistan on administrative responsibility on the question of exemption from administrative liability for minor offences of 26 April 2011;

(e) The law on pretrial detention during criminal proceedings of 29 September 2011.

(6) The Committee also notes with interest the efforts of the State party to develop policies, programmes and administrative measures in response to the recommendations of the Committee against Torture, including adoption of a national plan of action following consideration of its third periodic report by the Committee in 2007.

C. Principal subjects of concern and recommendations

Widespread torture and ill-treatment

(7) The Committee is concerned about numerous, ongoing and consistent allegations that torture and ill-treatment are routinely used by law enforcement, investigative and prison officials, or at their instigation or with their consent, often to extract confessions or information to be used in criminal proceedings. While recognizing that the State party is not subject to the jurisdiction of the European Court of Human Rights, the Committee notes that in 2011 the Court determined that "the use of torture and ill-treatment against detainees in Uzbekistan is 'systematic', 'unpunished' and 'encouraged' by law enforcement and

security officers."[6] The Committee is concerned that the State party deemed "unfounded" numerous complaints of torture raised during the review, several of which had previously been addressed by other United Nations human rights mechanisms. It notes that while the State party indicated that 45 individuals were prosecuted for torture in the period 2010–2013, the State party recorded 336 complaints of torture or ill-treatment against law enforcement officers during the same period. While welcoming the information submitted by the State party that the legislative, judicial and executive branches of Government are combating torture, the Committee is concerned that it has not received information suggesting that executive branch officials have recently and publicly condemned torture or directed condemnation to police and prison officials (arts. 4, 12, 13, 15 and 16).

As a matter of urgency, the State party should:

(a) Carry out prompt, impartial and effective investigations into all allegations of torture and ill-treatment and prosecute and punish all those responsible, including law enforcement and prison officials. The Committee reiterates its recommendations that the State party should apply a zero-tolerance approach to the continuing problem of torture and to the practice of impunity;

(b) Ensure that high level officials in the executive branch publicly and unambiguously condemn torture in all its forms, directing this especially to police and prison staff;

(c) Warn that any person committing such acts, or otherwise complicit or participating in torture will be held personally responsible before the law for these acts and subject to severe criminal penalties.

Harassment, arbitrary imprisonment and alleged torture of human rights defenders

(8) The Committee is deeply concerned by numerous and consistent reports of the arbitrary imprisonment of human rights defenders and journalists in retaliation for their work. The Committee is particularly concerned by allegations that numerous human rights defenders that have been deprived of their liberty have been subjected to torture and other ill-treatment, including: Gaibullo Djalilov, Rasul Khudoynazarov, Azam Formonov, Mehrinisso and Zulhumor Hamdamova, Nosim Isakov, Yuldash Rasulov, Zafarjon Rahimov, Akzam Turgunov and Gulnaza Yuldasheva and journalist Muhammad Bekjanov. The Committee is also concerned by the apparent failure of the State party authorities to investigate effectively allegations that other human rights defenders, have been arbitrarily imprisoned or otherwise harassed in retaliation for their work, including but not limited to Bobomurod Razzakov, Solijon Abdurakhmanov, Isroiljon Holdarov, Turaboi Juraboev, Ganihon Mamatkhanov, Dilmurod Saidov, Nematjon Siddikov and Elena Urlayeva. The Committee regrets the State party's insistence to the Committee that the above-mentioned allegations are "unfounded", despite the existing corroboration. It is further concerned that full, independent and effective investigations of the allegations and prosecution of the perpetrators have not taken place (arts. 4, 12, 13 and 16).

The Committee recommends that the State party should:

(a) Recognize that human rights defenders are at risk and have been targeted for reprisals due to the performance of their human rights activities, which play an important role in a democratic society;

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[6] European Court of Human Rights, application no. 7265/10, *Yakubov v. Russia*, judgment of 8 November 2011, para. 82.

(b) Take all necessary measures to ensure that all human rights defenders are able to conduct their work and activities freely and effectively;

(c) Investigate promptly, thoroughly and impartially all allegations of harassment, arbitrary arrest, denial of adequate medical treatment and torture or ill-treatment of human rights defenders, including those listed above, prosecute and punish appropriately those found guilty, and provide the victims with redress;

(d) Release from detention human rights defenders who are imprisoned and in detention in retaliation for their human rights work.

Investigation and prosecution of acts of torture and ill-treatment

(9) The Committee is deeply concerned at the failure of the authorities to carry out prompt, effective and independent investigations into allegations of torture and ill-treatment by public officials, including in the cases of Erkin Musaev, Batyrbek Eshkuziev, Bahrom Ibragimov, Davron Kabilov, Ravshanbek Vafoev, Ruhiddin Fahrutdinov, Gayrat Mehliboev, Rustam Usmanov, Vahit Gunes, Zahid Umataliev, Norboy Kholjigitov and Yusuf Jumaev. While noting the responses of the State party to cases of alleged violations of the Convention, the Committee reiterates its concern that the State party presented extensive detail on the alleged crimes committed by the complainants and not on any State party investigations into these allegations of torture (arts. 12, 13 and 16).

The State party should provide further specific information regarding the steps taken to investigate the instances of alleged torture and ill-treatment raised by the Committee. The State party should provide the Committee with current data on the number of complaints received alleging torture and ill-treatment by law enforcement and other public officials, the number investigated by the State party, any prosecutions brought and any resulting convictions and sentences. The State party should also provide the Committee with data on cases in which officials were subjected to disciplinary measures for failure to investigate complaints of torture or ill-treatment adequately or for refusal to cooperate in investigating any such complaint.

Definition of torture and amnesties for torture

(10) The Committee remains concerned that, because the definition in article 235 of the criminal code restricts the prohibited practice of torture to the actions of law enforcement officials and does not cover acts by "other persons acting in an official capacity", including those acts that result from the instigation, consent or acquiescence of a public official, it does not contain all the elements of article 1 of the Convention. The Committee welcomes the information that the Supreme Court issued decisions in 2004 and 2008 indicating that courts should use the definition of torture in article 1 of the Convention, but is concerned at reports that judges, investigators and law enforcement personnel continue to apply only the criminal code. The Committee is further concerned that the State party continues to award amnesties to individuals who have been convicted of violating article 235 of the criminal code (arts. 1 and 4).

The Committee reiterates its previous recommendation that the State party adopts in its criminal code a definition of torture that reflects all of the elements contained in article 1 of the Convention. The State party should ensure that persons who act in an official capacity, as well as officials who consent to or acquiesce in torture perpetrated by third parties, are classified under the law as perpetrators of torture rather than, as is presently the case, persons who aid and abet torture. The practice of granting amnesties to persons convicted of torture or ill-treatment should be abolished, as outlined by the Committee in its general comments Nos. 2 (2007) on the implementation of article 2 by States parties and 3 (2012) on the implementation of

article 14 by States parties, which affirm that amnesties for the crime of torture are incompatible with the obligations of States parties.

The events in Andijan in 2005

(11) The Committee remains concerned that there have been no full and effective investigations into the numerous claims of excessive use of force by officials during the events of May 2005 in Andijan. The Committee recalls that the acts of the Uzbek officials resulted, according to the State party, in 187 deaths and according to other sources, 700 or more deaths, as well as in numerous detentions, and that the Committee is not aware of cases in which law enforcement personnel were prosecuted for using excessive force against civilians, arbitrary detention, or torture and ill-treatment of persons taken into custody in connection with the events. The Committee further remains concerned that the State party has limited and obstructed, and therefore prevented, independent human rights monitoring in the aftermath of these events and has not permitted any independent investigation into these events, declaring that in its view the events of May 2005 are "closed" (arts. 1, 4, 12, 13 and 16).

The Committee reiterates its recommendation that the State party should take effective measures to institute a full, effective and impartial inquiry into the events of May 2005 in Andijan, in order to ensure that alleged violations of the Convention are investigated and the individuals found responsible are properly punished and victims obtain redress. The Committee recommends that credible, independent experts conduct this inquiry and that the results be made available to the public.

Sexual violence

(12) The Committee is concerned at the reports it has received that the authorities have perpetrated or acquiesced in, threatened to perpetrate and threatened to acquiesce in acts by other prisoners of sexual violence against individuals deprived of their liberty. It notes in particular the cases of human rights defender Mutabar Tajebaeva, who alleges that she was forcibly sterilized against her will while imprisoned in March 2008; Katum Ortikov, who alleges that he was subjected to sexual violence and threatened by police that he would be raped by another inmate while in custody in January 2009; Rayhon and Nargiza Soatova, who allege that they were gang-raped by police while in custody in May 2009; Mehrinisso and Zulhumor Hamdamova, who allege that that they were forced to strip and threatened with rape by police while in custody in November 2009; and human rights defender Gulnaza Yuldasheva, who alleges that she was threatened by police with rape while in custody in 2012. The Committee's concerns are amplified by the claims of the State party that there have been no cases in which it has received complaints of sexual violence against persons deprived of their liberty since the Committee's previous review (arts. 2 and 11).

The Committee recommends that the State party ensure that thorough investigations are undertaken of all allegations of torture or ill-treatment, including sexual violence and rape, committed in detention facilities and other places of deprivation of liberty; that those found guilty are prosecuted and punished and that adequate redress and compensation are provided to the victims.

Fundamental legal safeguards

(13) The Committee expresses its serious concern at the failure of the State party in practice to afford all persons deprived of their liberty with all fundamental legal safeguards from the very outset of detention. The Committee is concerned at reports that detainees are frequently denied access to a lawyer of their choice independent of State authority and that police officers forcibly extract confessions in the period immediately following deprivation of liberty. The Committee is also concerned that individuals charged with administrative offences are not provided in law or in practice with sufficient access to independent legal

counsel or to prompt presentation before a judge. Taking into account the consistency of the information received, the Committee regrets the assertion by the State party that it had detected no case in which officials failed to provide safeguards for persons deprived of their liberty during the reporting period and that as a result, no officials have been subject to disciplinary or other measures for such conduct (arts. 2, 11, 12, 13, 15 and 16).

The State party should immediately adopt measures to ensure in law and practice that every person deprived of his or her liberty, including pursuant to the domestic administrative law, is afforded legal safeguards against torture from the outset of detention. The State party should:

(a) Ensure that all individuals deprived of their liberty have prompt and unimpeded access to a lawyer of their choice independent of State authority, that they obtain, at their request, immediate access to an independent medical examination, that they may, at their request, contact a family member and that they are informed of their rights and the charges against them;

(b) Ensure that the State party monitors the provision of safeguards by all public officials to persons deprived of their liberty, including by requiring that the relevant information be documented in detention registers and that the compliance of officials with these reporting requirements be monitored;

(c) Ensure that any public official who denies fundamental legal safeguards to persons deprived of their liberty is disciplined or prosecuted and provide data to the Committee on the number of cases in which public officials have been disciplined for such conduct;

(d) Consider taking measures to ensure the videotaping of all interrogations in police stations and detention facilities as a preventive measure.

Independence of lawyers

(14) The Committee is concerned at the information received that the Chamber of Advocates is not sufficiently independent from the Ministry of Justice and that this has had a negative impact on the independence of the legal profession. The Committee is also concerned that a legislative change in 2009 requiring all attorneys to undergo recertification every three years has in practice resulted in denial of licences to several attorneys who previously represented individuals allegedly subjected to torture, including Ruhiddin Komilov, Rustam Tyuleganov and Bakhrom Abdurakhmanov (art. 2).

The State party should take steps to ensure the independence of lawyers and consider amending its legislation to ensure full independence of the Chamber of Advocates from the Ministry of Justice, in particular removing the authority of the Ministry to appoint and remove the Chair of the Chamber. The State party should consider amending the requirement that lawyers obtain recertification to practise every three years.

Application of habeas corpus provisions

(15) The Committee welcomes the introduction of habeas corpus provisions in domestic legislation. However, it is concerned that judges are not permitted to assess the legality of detention, that the participation of defence lawyers in habeas corpus hearings is not mandatory, that such hearings are reportedly closed and that the 72-hour period in which a person may be detained before being brought before a judge exceeds the 48-hour period recommended by the Committee. Moreover, the Committee is concerned by reports that officials frequently exceed the allowable time period in practice, including by detaining individuals on administrative charges or recording the time or date of detention incorrectly (arts. 2, 11, 12, 13, 15 and 16).

The Committee recommends that the State party amend the criminal procedure code to provide judges with competence to apply less restrictive alternatives to detention during habeas corpus hearings, including guarantees of appropriate conduct that would allow the accused to be released pending trial. The State party should ensure in law and in practice that the right of detainees to a lawyer of their choice in habeas corpus hearings is respected. The State party should also ensure that all habeas corpus hearings are public and accessible to independent monitors. The State party should consider revising its legislation so that any detainee, whether detained on criminal or administrative grounds, must be brought to a habeas corpus hearing within 48 hours of deprivation of liberty.

Evidence obtained through torture

(16) The Committee is concerned about numerous allegations that persons deprived of their liberty were subjected to torture or ill-treatment for the purpose of compelling a forced confession and that such confessions were subsequently admitted as evidence in court in the absence of a thorough investigation into the torture allegations. The Committee is further concerned at the failure of the State party to provide the Committee with information on cases in which judges have deemed confessions inadmissible on the grounds that they were obtained through torture, or with data on the number of cases in which judges have sought investigations into allegations made by defendants that they confessed to a crime as a result of torture (art. 15).

The State party should ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made, by:

(a) Including the prohibition explicitly in all relevant articles of the criminal procedure code;

(b) Ensuring that judges ask all defendants in criminal cases whether or not they were tortured or ill-treated in custody and order independent medical examinations whenever necessary;

(c) Ensuring in law that judges are mandated to order an investigation when provided with prima facie evidence of torture during habeas corpus hearings;

(d) Providing the Committee with information on any cases in which confessions were deemed inadmissible on the grounds that they were obtained through torture and indicating whether any officials have been prosecuted and punished for extracting such confessions.

Independent complaints mechanism

(17) Notwithstanding the efforts of the State party to investigate complaints of torture, such as through instruction 334 of the Ministry of Internal Affairs, special staff inspection units and the Parliamentary Ombudsperson, the Committee is concerned that, according to numerous reports, these bodies have not been effective in combating torture and lack independence (art. 13).

The State party should ensure in law and in practice that every person has the right to complain of torture or ill-treatment to an effective and fully independent mechanism that will investigate and respond promptly and should ensure that the Parliamentary Ombudsperson is fully independent.

Independent monitoring of places of detention

(18) While noting the affirmation of the State party that all places of detention are monitored by independent national and international organizations and that they would

welcome further inspections, the Committee remains concerned at information it has received indicating the virtual absence of independent and regular monitoring of the places of detention. The Committee is further concerned at the information it has received about measures taken by the State party that have impeded the work of numerous independent human rights organizations which previously operated in the State party. The Committee is alarmed by the announcement in April 2013 by the International Committee of the Red Cross that it was ceasing its visits to places of detention in the State party on the grounds that it had been unable to follow its working procedures, rendering such visits "pointless" (arts. 2, 11, 12 and 13).

The Committee urges the State party to establish a national system that independently, effectively and regularly monitors and inspects all places of detention without prior notice, reports publicly on its findings, and raises with the authorities detention conditions or conduct in places of detention amounting to torture or ill-treatment. The State party should amend its legislation, regulations and policies as necessary to facilitate the reopening, granting of access to and full functioning of independent national and international human rights and humanitarian organizations in the State party. The State party should ensure that representatives of such organizations are able to carry out independent, unannounced monitoring of all places of deprivation of liberty, in accordance with their standard operating procedures.

Conditions of detention

(19) While the Committee appreciates the information from the State party regarding the decrease in the number of prisoners in the correctional institutions of the State party, it is concerned at the numerous reports of abuses in custody and deaths in detention, some of which are alleged to have followed torture or ill-treatment. The Committee also remains concerned regarding the conditions in the Jaslyk detention facility (arts. 2, 11 and 16).

The Committee reiterates its recommendation that the State party should improve conditions of detention, including in the Jaslyk detention facility. The State party should take prompt measures to ensure that all instances of death in custody are promptly investigated and those responsible for any deaths resulting from torture, ill-treatment or any other illegal actions are prosecuted.

Redress for victims of torture

(20) The Committee is concerned that, according to the information from the State party, it has not awarded or provided any compensation to victims of torture in the reporting period, despite provisions providing for the rights of victims to material and moral rehabilitation in legislation. The Committee is further concerned at the lack of concrete examples of cases in which individual victims of torture received medical or psychosocial rehabilitation (art. 14).

The State party should ensure that victims of torture obtain redress and have an enforceable right to fair and adequate compensation, including the means for as full a rehabilitation as possible. The Committee draws the attention of the State party to its general comment No. 3 (2012), which explains the content and scope of the obligations of States parties to provide full redress to victims of torture and recommends amending the domestic legislation accordingly.

Independence of the judiciary

(21) The Committee remains concerned that the judiciary remains weak, inefficient and influenced by the executive, that judges lack security of tenure and that lower-level appointments are made by the executive, which reappoints judges every five years (arts. 2, 12 and 13).

The State party should take measures to ensure the full independence and impartiality of the judiciary in the performance of its functions and review the regime of appointment, promotion and dismissal of judges in line with the relevant international standards, including the Basic Principles on the Independence of the Judiciary (endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985).

Forced labour and child labour

(22) The Committee welcomes the information that young children up to ninth grade are no longer systematically involved in work in the cotton sector, but is concerned at reports that between 500,000 and 1.5 million adults and high-school student aged 15 to 17 continue to be mobilized to pick cotton for up to two months each autumn and that during that time, they live in substandard conditions, without access to safe drinking water (arts. 2 and 16).

The Committee recommends that the State party should end the practice of using the forced labour of adults and children in the cotton sector and permit international and independent national non-governmental organizations and activists to conduct regular independent monitoring.

Situation of refugees and non-refoulement

(23) The Committee is particularly concerned at allegations that some individuals extradited from neighbouring countries have been subjected to torture and others detained incommunicado. The Committee is also concerned that nearly 200 refugees recognized by the Office of the United Nations High Commissioner for Refugees (UNHCR) who reside in Uzbekistan are considered to be migrants and their specific protection needs are not recognized because of the absence of a refugee law in line with the international standards for the protection of refugees (arts. 2 and 3).

The State party should ensure that individuals extradited to face trial in its courts are awarded the full protection of the Convention. The State party should adopt a refugee law that complies with the terms of the Convention. The State party should invite UNHCR to return and assist in protecting the refugee population. It should consider becoming party to the Convention relating to the Status of Refugees of 1951 and its Protocol of 1967.

Forced sterilization of women

(24) The Committee is seriously concerned at substantiated reports it has received that women who have given birth to two or more children, particularly in rural regions, have been subjected to sterilization procedures without informed consent (arts. 2, 12 and 16).

The Committee recommends that the State party eliminate the sterilization of women without their informed consent, amounting to forced sterilization, and protect the reproductive rights of women. The Committee further recommends that the State party establish a confidential, independent complaints mechanism that can be easily accessed by women who allege that they have been subjected to sterilization procedures in the absence of their free and informed consent.

Violence against women

(25) The Committee is concerned by reports of cases of violence against women, including in places of detention and elsewhere, and notes the lack of information provided about prosecutions of persons for acts of violence against women. The Committee is further concerned that domestic violence and marital rape are not defined in the criminal law of the State party and at reports that law enforcement officers are dismissive of women's complaints of such violence and that there are inadequate facilities available for women victims of such violence in the State party (arts. 2, 12, 13, 14 and 16).

The State party should adopt specific legislative and other measures to prevent violence against women, including domestic violence. The State party should define and criminalize domestic violence and marital rape in its legislation and ensure that all women have access to adequate medical, social and legal services and temporary accommodation. The State party should ensure that mechanisms are in place to encourage women victims of violence to come forward and that all allegations of violence are promptly, thoroughly and effectively investigated, that perpetrators are held accountable and that women victims of violence obtain adequate redress including, inter alia, compensation and rehabilitation.

Cooperation with United Nations human rights mechanisms

(26) Despite the recent efforts of the State party to cooperate with certain United Nations human rights mechanisms and procedures, the Committee is concerned that the State party has not accepted the recent requests of more than 10 special procedures of the Human Rights Council to visit the country.

The State party should consider issuing a standing invitation to the special procedures of the Human Rights Council and in particular facilitate the outstanding request of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to visit Uzbekistan at the earliest occasion possible.

Training of personnel

(27) The Committee takes note of the information regarding study programmes on the Convention and of training workshops it has organized for law enforcement officers, prison officials, medical personnel serving in the correctional system and other State officials. The Committee regrets that the State party has not provided information regarding the way it assesses whether this training has been effective. The Committee also notes a lack of information provided on gender-specific training (art. 10).

The State party should provide gender-specific training and training for medical personnel dealing with detainees, in particular in pretrial detention facilities, on the identification of signs of torture and ill-treatment pursuant to the Istanbul Protocol of 1999 (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). The State party should develop and implement a methodology to assess the effectiveness and impact of its training and educational programmes on cases of torture and ill-treatment.

Other issues

(28) The Committee recommends that the State party consider making the declarations envisaged under articles 21 and 22 of the Convention, in order to recognize the competence of the Committee to receive and consider communications.

(29) The Committee invites the State party to consider ratifying the other core United Nations human rights treaties to which it is not yet party, namely the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection of All Persons from Enforced Disappearance, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, Convention on the Rights of Persons with Disabilities and its Optional Protocol; Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

(30) The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

(31) The Committee requests the State party to provide, by 23 November 2014, follow-up information in response to the Committee's recommendations related to (a) eradication of widespread torture and ill-treatment, (b) eradication of harassment, arbitrary imprisonment and alleged torture of human rights defenders and (c) ensuring the respect of fundamental legal safeguards as contained in paragraphs 7, 8 and 13 of the present document. In addition, the Committee requests follow-up information on ensuring the investigation and prosecution of acts of torture and ill-treatment and ensuring that judges ask all defendants in criminal cases whether or not they were tortured or ill-treated in custody and order independent medical examinations whenever necessary, as contained in paragraphs 9 and 16 (b) of the present document.

(32) The State party is invited to submit its next report, which will be the fifth periodic report, by 23 November 2017. To that purpose, the Committee invites the State party to accept, by 23 November 2014, to report under its optional reporting procedure, consisting in the transmittal, by the Committee to the State party, of a list of issues prior to the submission of the report. The response of the State party to this list of issues will constitute, under article 19 of the Convention, its next periodic report.

63. Cyprus

(1) The Committee against Torture considered the fourth periodic report of Cyprus (CAT/C/CYP/4) at its 1226th and 1229th meetings, held on 8 and 9 May 2014 (see CAT/C/SR.1226 and 1229), and adopted at its 1244th and 1245th meetings, held on 21 May 2014 (see CAT/C/SR.1244 and 1245), the following concluding observations.

A. Introduction

(2) The Committee expresses its appreciation to the State party for accepting the optional reporting procedure and for having submitted its fourth periodic report in a timely manner thereunder, as it improves the cooperation between the State party and the Committee and focuses the examination of the report as well as the dialogue with the delegation.

(3) The Committee appreciates the open and constructive dialogue with the State party's high-level multisectoral delegation, as well as the additional information and explanations provided by the delegation to the Committee.

B. Positive aspects

(4) The Committee welcomes the ratification by the State party of the following international instruments:

(a) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 6 April 2006;

(b) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 29 April 2009;

(c) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 2 July 2010;

(d) The Convention on the Rights of Persons with Disabilities, on 27 June 2011.

(5) The Committee welcomes the State party's ongoing efforts to revise its legislation in order to give effect to the Committee's recommendations and to enhance the implementation of the Convention, including the adoption of:

(a) Law No. 163(I)/2005 on the Rights of Arrested and Detained Persons;

(b) Law No. 60(I)/2014, on Preventing and Combating Trafficking in Human Beings and Exploitation and Protecting its Victims;

(c) Law No. 126(I)/2012 on the Establishment and Regulation of Private Employment Agencies and Related Matters, which is aimed at preventing such agencies from being used for trafficking activities.

(6) The Committee also welcomes the following administrative and other measures:

(a) The adoption of the National Action Plan on the Prevention and Handling of Family Violence (2010–2013) in 2009;

(b) The adoption of the National Action Plan against the Trafficking of Human Beings (2013–2015) in 2013 and the abolition of the special visa for artists;

(c) The appointment of the Ombudsperson as a national preventive mechanism, in accordance with Law No. 2(III)/2009 on the Provisions of the Optional Protocol of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

C. Principal subjects of concern and recommendations

Fundamental legal safeguards

(7) While welcoming the enactment of Law No. 163(I)/2005 (para. 5 (a) above), and its application to all persons in detention, including those detained under the immigration legislation, the Committee is concerned that section 23 of the Law does not guarantee the right to be examined routinely and free of charge by an independent doctor from the outset of the deprivation of liberty. The Committee is further concerned that article 30 of the same Law provides for criminal sanctions for detainees who abuse the right to medical examination or treatment, which may have a deterrent effect on the effective exercise of that right. The Committee also takes note of repeated allegations that persons deprived of their liberty were not given information on their rights or were given information that was not in a language they understood, and that individuals were not assigned legal aid prior to their initial interrogations (arts. 2, 11 and 12).

The State party should:

(a) Abolish article 30 of Law No. 163(I)/2005 and ensure that detained persons undergo a routine and free-of-charge medical examination when they arrive at a detention facility, and are afforded access to examination and treatment by independent doctors on request without conditioning such access on the permission of officials. All medical examinations of prisoners should be conducted out of the hearing and, whenever the security situation allows, out of the sight of prison officers;

(b) Establish an effective and expeditious system of free legal aid that guarantees the right to unrestricted access to an ex officio lawyer, including consultations in private, as from the moment of deprivation of liberty and during interrogations;

(c) Ensure that all persons detained are informed orally and in writing of their rights in a language they understand, including information about the legal remedies to challenge the lawfulness of their detention, the rights of persons under the immigration legislation, and the right to have the free assistance of an interpreter;

(d) Ensure that the State party monitors regularly compliance with the legal safeguards by all public officials and that those who do not comply with those safeguards are duly disciplined.

Impunity and prompt, effective and impartial investigations

(8) The Committee welcomes the criminalization of torture and ill-treatment in sections 3 and 5, respectively, of Law No. 235/90 on the ratification of the Convention, which fully incorporates the definition of torture as set out in the Convention. However, the Committee observes that section 3 of the Law has never been invoked before, or applied by, domestic courts and section 5 has been invoked in only 4 of the 11 criminal cases of alleged ill-treatment by police officers registered from 2006 to 2010. The Committee also notes with great concern that, during the same period, out of 128 complaints relating to torture and ill-treatment investigated by the Independent Authority for the Investigation of Allegations and Complaints against the Police, only one case ended with a criminal conviction for common assault. The low rate of conviction does not correspond to the documented allegations of ill-treatment by law enforcement officials, particularly against immigrants. The Committee also takes into consideration reports that allege a lack of transparency of the investigations and insufficient protection afforded to complainants, who reportedly have been, on various occasions, accused of bodily harm against the police officers they complained about (arts. 1, 2, 4, 12, 13 and 16).

The State party should strengthen the implementation of the existing legislation and the measures already adopted to change the culture of impunity by, inter alia:

(a) Requiring all officials to report to the Office of the Attorney General cases indicative of ill-treatment, and adopting protective measures to ensure the confidentiality and safety of reporting officers;

(b) Ensuring that the Attorney General is duly informed of all the allegations of torture or ill-treatment received by the Independent Authority for the Investigation of Allegations and Complaints against the Police and carries out prompt, effective and impartial investigations whenever there are reasonable grounds to believe that acts of torture or ill-treatment have been committed, including investigation of those officials who knew, or should have known, that ill-treatment was occurring and failed to prevent it or report it;

(c) Ensuring that the Attorney General entrusts the investigation of reports of torture or ill-treatment by law enforcement officials only to independent criminal investigators;

(d) Ensuring that public officials under investigation of having committed acts of torture or ill-treatment are immediately suspended from their duties and remain so throughout the investigation, subject to the observance of the principle of presumption of innocence;

(e) Guaranteeing that complainants are protected against ill-treatment or intimidation that may arise as a consequence of their complaint, and are duly informed of the progress and results of their complaint;

(f) Duly bringing to trial alleged perpetrators of acts of torture or ill-treatment and, if they are found guilty, punishing them with penalties proportionate to the grave nature of their acts. The Committee draws attention to paragraph 10 of its general comment No. 2 (2007), in which the Committee emphasizes that it would be a violation of the Convention to prosecute conduct solely as ill-treatment where the elements of torture are also present.

Domestic violence

(9) The Committee welcomes the legislative and other measures aimed at combating domestic violence, including the extension of the legal protection in this area to migrant workers living with their employers and the adoption of the National Action Plan on the

Prevention and Handling of Family Violence (2010–2013) (para. 6 (a) above). However, the Committee notes with concern the low number of investigations and convictions, the majority of which ended in a fine, according to the information provided. Moreover, the insufficient assistance to victims, including the lack of legal aid, is a matter of concern, as is the lack of information regarding the implementation and impact of the successive national action plans. The Committee also notes with concern reports that indicate a reluctance of migrant spouses and migrant live-in workers to report violence against them to the police, since their right to a residence permit is linked to the consent of the very same person they intend to denounce (arts. 2, 12, 13, 14 and 16).

The State party should redouble its efforts to combat domestic violence, inter alia, by:

(a) Ensuring the effective implementation of the legal framework, including its application to live-in domestic workers, by promptly, effectively and impartially investigating all incidents of violence and prosecuting and punishing perpetrators in accordance with the gravity of their acts;

(b) Sensitizing and training law enforcement personnel, social welfare officials, prosecutors and judges on the investigation, prosecution and sanctioning of cases of domestic violence and on creating the appropriate conditions for victims to report such cases to the authorities;

(c) Taking measures to facilitate complaints by victims and informing them about recourses available;

(d) Strengthening the public awareness-raising campaigns to fight domestic violence and gender stereotypes;

(e) Undertaking an impact assessment of the various action plans and the criminal justice responses to counter domestic violence, with a view to increasing their effectiveness, and ensure their application to live-in domestic workers;

(f) Ensuring that victims of domestic violence benefit from effective protection, including the right to a residence permit independent of the abusive spouse or their migration status, and have access to sufficient and adequately funded shelters, medical and legal aid, psychosocial counselling and social support schemes.

Trafficking in persons

(10) While welcoming the legislative and other measures to address trafficking in persons (paras. 5 (b) and (c) and 6 (b) above), the Committee is concerned at reports indicating that no offender has ever been convicted for the crime of human trafficking; convictions are handed down, rather, under non-trafficking statutes that impose more lenient sentences. The Committee also regrets the lack of information provided on the measures taken to investigate officials who have participated in this crime. The Committee notes further information indicating that the new Law 60(I)/2014 on trafficking does not provide victims with the right to an effective remedy until they are recognized as victims by the Office of Combating Trafficking in Human Beings of the police, on the basis of its own internal determination procedure. The Committee also takes into consideration deficiencies reported in the provision of social services to victims of trafficking (arts. 2, 12, 13, 14 and 16).

The State party should:

(a) Vigorously enforce the new legislative framework and promptly, thoroughly, effectively and impartially investigate, prosecute, convict and punish trafficking offenders, including officials involved, with appropriate penalties;

(b) Provide specialized training to the police, prosecutors and judges on the application of the new Law 60(I)/2014 and on the effective investigation, prosecution

and punishment of acts of trafficking, and to immigration officers and social workers on the identification of victims of trafficking, including victims of torture among the trafficked persons;

(c) Monitor and assess the new visa regime to prevent its potential misuse by traffickers and urgently activate the national referral mechanism;

(d) Undertake an impact assessment of the national plans, with a view to increasing their efficiency;

(e) Provide an effective remedy to all victims of the crime of trafficking, ensuring prompt and adequate psychological support, medical care, access to welfare benefits, adequate shelter and work permits for them, irrespective of their ability to cooperate in the legal proceedings against traffickers.

Identification of victims of torture during the refugee determination process

(11) While recognizing that the government medical council that assesses potential victims of torture during the asylum process was reinforced in 2012 with a psychologist, the Committee is concerned about information indicating that the process still does not include as a routine measure a psychological/psychiatric evaluation of victims. The Committee also notes with concern the insufficient interpretation during the medical assessment, which reportedly led to children of torture claimants assuming the role of interpreters, as well as information indicating that none of the medical evaluations determined that torture had been the cause of the findings. The Committee also takes into account information indicating that, to date, there is no procedure in place for the timely identification of victims of torture arriving in the State party (arts. 2, 3 and 16).

The State party should:

(a) Urgently improve the screening system introduced by the Asylum Service to ensure that effective measures are in place to identify as early as possible victims of torture and trafficking, and provide them with immediate rehabilitation and priority access to the asylum determination procedure;

(b) Provide a thorough medical and psychological examination and report, in accordance with the procedures set out in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol), by trained independent health experts, with the support of professional interpreters, when signs of torture or traumatization have been detected during the personal interviews before the Asylum Service;

(c) Provide regular and compulsory training on the procedures established in the Istanbul Protocol to asylum officers and health experts participating in the asylum determination procedure, including on training on detecting psychological traces of torture and on gender-sensitive approaches.

Judicial review with suspensive effect

(12) While noting the decision of the State party to establish a new administrative court with competence to look into the merits of appeals filed by rejected asylum seekers, the Committee is concerned that, at present, asylum seekers are not legally protected against refoulement during the judicial review process and that there is no effective judicial remedy with automatic suspensive effect to challenge the deportation of asylum applicants and undocumented immigrants, as indicated by the European Court of Human Rights in its judgement in the case of *M.A. v. Cyprus* of 23 July 2013 (arts. 2 and 3).

The State party should abide by its commitment to provide for an effective judicial remedy with automatic suspensive effect of the deportation of asylum seekers and

other undocumented immigrants, through a court that satisfies the requirements of due process with competence to look into the merits of appeals.

Non-refoulement

(13) The Committee is greatly concerned at the low recognition rates of refugee status and subsidiary protection status, as well as by reports alleging that asylum seekers have been deported to their countries of origin despite serious risks of torture or religious persecution, such as persons of the Baha'i faith deported to the Islamic Republic of Iran. Moreover, the Committee observes with concern that the amended section 19, paragraph 7, of the Refugee (Amending) Law No. 2 of 2013 no longer protects from refoulement persons granted subsidiary protection status, including persons granted such status on account of a real risk of being subjected to torture (arts. 2 and 3).

The State party should amend section 19, paragraph 7, of the Refugee (Amending) Law No. 2 to ensure that beneficiaries of subsidiary protection are protected from unwarranted refoulement. The State party should also ensure that the asylum claims are thoroughly and individually examined and allow sufficient time for asylum seekers to fully indicate the reasons for their application and obtain and present crucial evidence. Beneficiaries of subsidiary protection should be able to have their cases re-examined before the subsidiary protection ceases.

Legal aid for asylum seekers and undocumented immigrants

(14) The Committee is concerned that asylum seekers do not have access to legal aid at the first instance administrative level of the asylum process. The Committee also notes with concern that asylum seekers and undocumented immigrants, including unaccompanied minors, can have access to legal aid to challenge their deportation and detention orders only if they are able to argue before a legal aid judge of the Supreme Court that they have good chances of success because of "blatant illegality" or "irreparable damage". The Committee considers that the criteria for legal aid are overly restrictive for asylum seekers and undocumented immigrants and place them at risk of unwarranted refoulement and illegal detention (arts. 2 and 3).

The State party should amend the Refugee Law and the Law on Provision of Legal Aid in order to guarantee access to independent, qualified and free-of-charge legal assistance for asylum seekers during the entire asylum procedure, at first instance level and during the judicial review, as well as for undocumented immigrants, including unaccompanied minors, in addition to the appointment of a guardian, in order to challenge the lawfulness and duration of their deportation and detention orders.

Detention conditions

(15) The Committee appreciates the remarkable reduction of overcrowding in the prison system, from an overpopulation of 204 per cent in 2012 to 114 per cent in April 2014. Moreover, the Committee commends the undertaking of the President of the Republic to reform effectively the prison system and replace the overcontrolling approach with a human-rights-based approach. The Committee remains concerned, however, at the high number of deaths in custody, especially suicides, as well as the incidents of inter-prisoner violence, including gang rape, with the connivance of prison guards. The Committee is further concerned by information about obstacles that impede Turkish Cypriot prisoners detained in the southern part of the island receiving visits from family and friends. As acknowledged by the State party, the Prison Law and Regulations still permit the imposition, as a disciplinary punishment, of confinement to special isolation cells for up to 60 days or confinement to a personal cell for up to 90 days. Moreover, the Committee takes into account reports that allege the use of cellular confinement as an informal punishment

without procedure, as well as on the imposition of provisional disciplinary confinement for several days after an alleged commission of a disciplinary offence (arts. 2, 11 and 16).

The State party should continue its efforts to bring the conditions of detention in places of deprivation of liberty into line with the appropriate provisions of the Standard Minimum Rules for the Treatment of Prisoners, which are currently under revision, in particular by:

(a) Implementing effectively the measures designed to reduce overcrowding to a minimum, particularly through the wider application of non-custodial measures as an alternative to imprisonment, in the light of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);

(b) Ensuring: (i) that all incidents of death, suicide, attempted suicide and violence in custody are reported to central authorities for monitoring purposes; (ii) that all cases are effectively and independently investigated and, on a finding of criminal responsibility, lead to a penalty proportional to the gravity of the offence; (iii) enhanced monitoring and detection of at-risk detainees, adopting preventive measures regarding the risk of suicide and inter-prisoner violence, including procedures for management of the cases and increasing the number of prison staff; and (iv) continuous evaluation of the impact of the current measures to prevent suicide and inter-prisoner violence, with a view to increasing their efficiency;

(c) Revising the Prison Law and Regulations in order to ensure that solitary confinement: (i) is never applied to juveniles in conflict with the law or to persons with psychosocial disabilities and (ii) remains a measure of last resort, imposed for as short a time as possible, under strict supervision and judicial review. The State party should establish clear and specific criteria for decisions on isolation and ensure that detainees maintain social contact while in solitary confinement. The practice of imposing informal disciplinary isolation should be strictly prohibited;

(d) Giving all reasonable facilities to all detainees for receiving visits from their family and friends, in accordance with international standards.

Detention of asylum seekers

(16) The Committee is concerned that, although the Refugee Law permits the detention of asylum seekers only in exceptional cases and for a maximum of 32 days, in the majority of cases asylum seekers are detained under the Aliens and Immigration Law as undocumented immigrants, or for minor offences, and remain detained for protracted periods of time during the whole status determination procedure. The Committee notes further that asylum seekers are also detained when their asylum claims are refused at the administrative level but are pending judicial review. That situation prompted various hunger strikes by Syrian refugees in 2013 and incidents of suicide in protest against their detention (arts. 11 and 16).

The Committee urges the State party to ensure that persons in need of international protection, including those fleeing indiscriminate violence, are not detained or, if at all, only as a measure of last resort, after alternatives to detention have been duly examined and exhausted and for as short a period as possible. The State party should also refrain from applying the Aliens and Immigration Law to asylum seekers.

Detention of undocumented immigrants

(17) Noting that the Aliens and Immigration Law permits the administrative detention of undocumented immigrants in exceptional cases and when other less coercive measures are not considered adequate, in accordance with the European Union return directive (directive 2008/115/EG), the Committee is concerned that the Aliens and Immigration Law does not

list any alternatives to detention and that undocumented immigrants are routinely detained, without a consideration of less coercive measures or the person's risk of absconding. The Committee is further concerned by reports indicating that immigrants are being detained repeatedly by the police, owing to the absence of a valid residence permit, for periods that exceed the 18-month maximum legal period, even when the State party cannot carry out the deportation within a reasonable time. The Committee supports the view of the European Court of Human Rights in *M.A. v. Cyprus* that the current recourse before the Supreme Court under article 146 of the Constitution to challenge the lawfulness of a detention order, which is of an average of eight months at first instance, is too long to guarantee a prompt judicial review of the detention (arts. 11 and 16).

The State party should:

(a) Repeal the legal provisions that criminalize irregular entry and/or stay, and list in the legislation alternative measures to administrative detention, such as reporting requirements or sureties;

(b) Establish and apply guidelines to examine the necessity and proportionality of the detention and prohibit detention when there are no prospects for the immigrant of being removed within a reasonable time;

(c) Apply detention only as a last resort, after alternative measures to administrative detention have been duly examined and exhausted, when necessary and proportionate and for as short a period as possible, which should never exceed the absolute time limit for the administrative detention of undocumented immigrants, including in cases of repeated detention;

(d) Ensure that the release letter provides for a temporary residence permit for immigrants pending the regularization of their status, so that they do not enter the detention cycle;

(e) Ensure prompt and regular review by a court of the detention of undocumented migrants.

Ill-treatment and conditions of detention at the Menoyia detention centre

(18) While welcoming the appointment of a complaints committee in May 2013 to handle complaints regarding ill-treatment and detention conditions in the Menoyia detention centre, as well as the decision to refrain from using handcuffs, the Committee remains concerned by the numerous allegations of ill-treatment by police in the centre, which has led to protests and hunger strikes. The Committee also received information regarding very limited outdoor access, poor quality of food and frequent resort to solitary confinement (arts. 11 and 16).

The Committee urges the State party to ensure that the legal regime at Menoyia detention centre is suitable for its purpose and that it differs from the regime of penal detention. The complaints committee should vigilantly pursue each complaint and immediately transmit allegations of ill-treatment to the Office of the Attorney-General for further investigation. Solitary confinement should remain a measure of last resort, imposed for as short a time as possible, under strict supervision and judicial review.

Detention of unaccompanied children and families

(19) While acknowledging the efforts of the State party, through a ministerial decision communicated on 5 May 2014, to limit detention for the purpose of the deportation of unaccompanied children and families with children, the Committee notes with concern that such detention is still permitted if a mother with minor children "refuses to cooperate" or during the age verification process for an unaccompanied minor. In both cases, the families or minors will be detained "in suitable establishments that will be created in due time with

[European Union] Solidarity Funds". The Committee also notes with concern that children over the age of 8 can be forcibly separated from their parents and placed under the care of the Director of the Social Welfare Services (arts. 11 and 16).

The State party should ensure that unaccompanied children and families with children are not detained except as a measure of last resort and, in the latter case, after alternatives to detention have been duly examined and exhausted and in the best interest of the child, and for as short a period as possible. The right of children not to be forcibly separated from their parents should be respected, no matter what the age of the child. The State party in such instances should refrain from detaining unaccompanied children and families with children if there are no suitable places to host them.

Training

(20) While taking note of the various training programmes for police forces and the future training to be developed for prison staff, the Committee notes that the State party has not provided information on regular training on the provisions of the Convention for all officials involved in the treatment and custody of persons deprived of their liberty. The Committee is also concerned that the guidelines set out in the Istanbul Protocol have not been fully incorporated in investigations into cases of torture or ill-treatment (art. 10).

The State party should:

(a) Develop modules on the provisions of the Convention in the periodic and compulsory training programmes for all law enforcement officials, judges, prosecutors, prison and immigration officers and others;

(b) Provide regular training on the Istanbul Protocol to forensic doctors, medical personnel and other officials involved in dealing with detainees and asylum seekers in the investigation and documentation of cases of torture;

(c) Develop and apply a methodology for evaluating the effectiveness of educational and training programmes relating to the Convention and the Istanbul Protocol.

Missing persons

(21) The Committee welcomes the work of the bi-communal Committee on Missing Persons in Cyprus (CMP), which had identified, as at 22 November 2013, a total of 359 Greek Cypriots, out of the 1,493 officially reported missing, and 97 Turkish Cypriots, out of the 502 officially reported missing as a result of the inter-communal fighting (1963–1964) and of the events of July 1974 and afterwards. The Committee also notes that the mandate of the bi-communal CMP is limited to looking into cases of Cypriots reported missing, "without attempting to attribute responsibility for the deaths of any missing persons or make findings as to the cause of such deaths". The bi-communal CMP is also not empowered to grant redress to the relatives of the missing persons. While welcoming the fact that the Attorney General has opened some criminal investigations as a result of the successful identification by CMP of the remains, some relatives of missing persons have not been given the opportunity to challenge the acts or omissions of the investigating authorities in court (arts. 2 and 14).

The State party should redouble its efforts to guarantee that the relatives of missing persons identified by CMP receive appropriate redress, including the means for their psychological rehabilitation, compensation, satisfaction and for the implementation of the right to truth. As stated in paragraph 17 of the Committee's general comment No. 3 (2012) on article 14 of the Convention, a State's failure to investigate, criminally prosecute, or to allow civil proceedings related to allegations of acts of torture in a

prompt manner, may constitute a de facto denial of redress and thus constitute a violation of the State's obligations under article 14. Additionally, the Committee recalls that judicial remedies must always be available to victims, as should all evidence concerning acts of torture or ill-treatment upon the request of victims, their legal counsel, or a judge (general comment No. 3, para. 30).

Redress, including compensation and rehabilitation

(22) The Committee takes note of the information mentioned in the State report (CAT/C/CYP/4, para. 123) that only two cases concerning torture and ill-treatment were upheld by the Supreme Court, and regrets the lack of information on redress and compensation measures awarded by the courts of the State party to the two victims of those cases (art. 14).

The Committee draws the attention of the State party to general comment No. 3 (2012), in which the Committee explains the content and scope of the obligation of States parties to provide full redress to victims of torture. The State party should:

(a) Review the existing procedures for seeking reparation in order to ensure that they are accessible to all victims of torture and ill-treatment;

(b) Ensure full compliance with article 14 of the Convention, as interpreted in general comment No. 3 (2012), and provide the Committee with information on redress and compensation ordered by courts and ongoing rehabilitation, including resources allocated for that purpose.

Data collection

(23) The Committee regrets the absence of comprehensive and disaggregated data on complaints of, investigations into, and prosecutions and convictions for torture and ill-treatment by law-enforcement, security, military and prison personnel, at the criminal and disciplinary levels, as well as on deaths in custody, crimes involving trafficking, and domestic and sexual violence.

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data, at the criminal and disciplinary levels, on complaints of, investigations into and prosecutions and convictions for torture and ill-treatment, deaths in custody, trafficking and domestic and sexual violence, as well as on the means of redress, including compensation and rehabilitation, provided to the victims.

Other issues

(24) The Committee invites the State party to ratify the International Convention for the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

(25) The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in all appropriate languages, through official websites, the media and non-governmental organizations.

(26) The Committee requests the State party to provide, by 23 May 2015, follow-up information in response to the Committee's recommendations relating to strengthening legal safeguards for persons detained, as contained in paragraph 7 (d) of the present concluding observations. In addition, the Committee requests information on follow-up to the recommendations contained in paragraphs 11 (a) 17 (c) and 19 of the present document.

(27) The State party is invited to submit its next report, which will be the fifth periodic report, by 23 May 2018. For that purpose, the Committee will, in due course, submit to the

State party a list of issues prior to reporting, considering that the State party has accepted to report to the Committee under the optional reporting procedure.

64. Guinea

(1) In the absence of the initial report of Guinea, the Committee considered the measures taken by the State party to protect and implement the rights recognized in the Convention, in accordance with rule 67 of its rules of procedure, at its 1222nd and 1225th meetings (CAT/C/SR.1222 and SR.1225), held on 6 and 7 May 2014. The Committee adopted the following concluding observations at its 1243rd meeting (CAT/C/SR.1243), held on 20 May 2014.

A. Introduction

(2) The Committee regrets that the initial report of the State party was not submitted in 1990, which has prevented the Committee from assessing the implementation of the provisions of the Convention by the State party since its ratification of that instrument nearly 25 years ago. The Committee likewise regrets that the State party did not submit its initial report until the evening before its delegation appeared before the Committee, which did not allow the Committee to study it in time for the first day of the dialogue or to have it translated into the Committee's working languages. Nevertheless, the Committee welcomes with satisfaction the appearance of the high-level delegation and the submission of the initial report of Guinea (CAT/C/GIN/1), even though the report does not conform to the Committee's guidelines on the form and content of initial reports (CAT/C/4/Rev.3).

(3) The Committee welcomes the very frank and direct dialogue that was held with the State party's high-level delegation, which presented the situation in the State party and the numerous problems there, as well as the replies made orally by the delegation to the questions raised during the meetings by Committee members.

B. Positive aspects

(4) The Committee notes with satisfaction that since the ratification of the Convention on 10 October 1989, the State party has ratified or acceded to the following international instruments:

(a) The Convention on the Rights of the Child, on 13 July 1990;

(b) The Optional Protocol to the International Covenant on Civil and Political Rights, on 17 June 1993;

(c) The African Charter on the Rights and Welfare of the Child, on 27 May 1999;

(d) The Convention on the Prevention and Punishment of the Crime of Genocide, on 7 September 2000;

(e) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, on 7 September 2000;

(f) The Constitutive Act of the African Union, on 23 April 2002;

(g) The Rome Statute of the International Criminal Court, on 14 July 2003;

(h) The United Nations Convention against Transnational Organized Crime, on 9 November 2004;

(i) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on 9 November 2004;

(j) The Convention on the Rights of Persons with Disabilities, on 8 February 2008;

(k) The Optional Protocol to the Convention on the Rights of Persons with Disabilities, 8 February 2008;

(l) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 16 November 2011.

(5) The Committee also welcomes with satisfaction the legislative measures taken by the State party to give effect to the Convention, in particular:

(a) Decree No. D289/PRG/SGG/2011 of 28 November on the establishment of the Code of Conduct for members of the military and security forces;

(b) Act No. L/2008/011/AN of 19 August 2008 establishing the Children's Code;

(c) Act No. L010/AN/2000 of 10 July 2000 on reproductive health, which prohibits female genital mutilation.

(6) The Committee welcomes with satisfaction the steps taken by the State party to modify its policies, programmes and administrative procedures, including:

(a) The establishment of a National Observatory for Democracy and Human Rights by a decree of the Prime Minister dated 12 June 2008;

(b) The establishment of a Ministry of Human Rights and Public Freedoms in October 2012;

(c) The formulation of a strategic plan to combat female genital mutilation covering the period 2012–2016;

(d) The establishment of a Provisional National Reconciliation Commission;

(e) The establishment of a Working Group on legislative reform of the Criminal Code, the Code of Criminal Procedure and the Military Justice Code;

(f) The establishment of the National Strategy to Combat Sexist Violence;

(g) The establishment in August 2012 of a special police unit to deal with trafficking in persons.

C. Principal subjects of concern and recommendations

Definition and criminalization of torture

(7) Notwithstanding the preparation by the Legislative Reform Commission of draft revised texts of the Criminal Code, the Code of Criminal Procedure and the Military Justice Code which incorporate the definition of torture as set out in article 1 of the Convention, the Committee remains concerned at the fact that no definition of torture as such is contained anywhere in Guinea's domestic law. The Committee is also extremely concerned that such acts are not yet considered to constitute criminal offences in themselves but are criminalized only when they constitute an aggravating circumstance in the context of another criminal offence, as stipulated in article 287 of the Guinean Criminal Code (arts. 1 and 4).

The Committee urges the State party to fill all gaps in its legislation where acts of torture and ill-treatment are concerned, so that any person committing such an act, whether perpetrator or accomplice, shall be personally held responsible before the law, subject to criminal prosecution and duly punished. It therefore strongly urges the State party to ensure that the Reform Commission revises legislation with a view to making an act of torture or ill-treatment a separate criminal offence, with a view to

incorporating a definition of torture that is consistent with article 1 of the Convention. Furthermore, in the light of the Committee's general comment No. 2 (2007) on the implementation of article 2 by States parties, the Committee is of the view that "serious discrepancies between the Convention's definition and that incorporated into domestic law create actual or potential loopholes for impunity". The State party should also ensure that the penalties provided in this regard are proportional to the seriousness of the acts committed.

Absolute prohibition of torture

(8) While taking note of article 6 of the Constitution, the Committee deeply regrets the absence of any specific legal provision providing for an absolute ban on torture and ill-treatment, which no exceptional circumstance of any kind, be it a state of war or the threat of war, internal political instability or any other state of emergency, can justify. It likewise regrets the absence of any provision regarding the non-applicability of the statute of limitations to the crime of torture (art. 2).

The State party should:

(a) Establish, in law, an absolute and specific prohibition against torture and inhuman and degrading treatment;

(b) Establish in law the non-applicability of the statute of limitations to the crime of torture;

(c) Clearly and publicly reaffirm the absolute, non-derogable and intangible nature of the ban on torture.

Generalized practice of torture

(9) The Committee is deeply concerned by credible reports of acts of torture and ill-treatment practised in such places as facilities for the deprivation of liberty and especially in gendarmeries and military detention camps. The Committee is particularly concerned by credible reports provided in connection with the cases of the following persons: *Alhousseine Camara*, tortured in October 2011, *Ibrahima Bah* and *Sékouta Keita*, tortured in February 2012, *Ibrahim Sow*, tortured and deceased in February 2012, *Aboubacar Soumah*, subjected to torture and deceased in August 2012, *Ballah Condé*, tortured and deceased in December 2013, and *Tafsir Sylla*, tortured and deceased in February 2014. The Committee is particularly disturbed by the fact that these acts were committed during interrogations conducted by law enforcement officers while the victims were being held in custody and in the course of preliminary investigations for the purpose of extorting confessions (including by means of the "skewer technique") (arts. 2, 10, 11, 12, 13 and 16).

The State party should:

(a) Take immediate and effective steps to prevent and punish all acts of torture. In this connection, it should conduct thorough, independent and impartial investigations without delay into all allegations of torture and ill-treatment, including the cases of the victims mentioned in the preceding paragraph, and bring the perpetrators of these acts to justice;

(b) Train police officers and gendarmes in the absolute ban on torture and in all provisions of the Convention.

The events in Conakry Stadium

(10) The Committee is extremely concerned by the events that took place on 28 September 2009 in Conakry Stadium, which the International Commission of Inquiry on Guinea has qualified as crimes against humanity (S/2009/693, annex, para. 27). Despite the establishment of a "pool of judges" tasked with investigating and prosecuting the

perpetrators of these incidents, the Committee is concerned by the slow pace at which the State party is working to determine responsibility for the acts of torture, summary executions, rapes, sexual abuse, instances of sexual slavery, arrests, arbitrary detention and enforced disappearances perpetrated during those events by law enforcement officers. The Committee is particularly disturbed at the massive sexual violence committed against girls and women during these events which has seldom been prosecuted, thereby contributing to a persistent climate of impunity. The Committee is also seriously concerned at the fact that certain individuals charged by the Guinean authorities with flagrant violations of human rights committed during these events are members of the current Government, namely Colonel Pivi, Minister for Presidential Security, and Moussa Tiegboro Camara, Secretary of State for Special Services, Drug Control and Organized Crime (arts. 2, 12, 13, 14 and 16).

The State party should:

(a) Ensure, as a matter of priority, that all the human rights violations committed during the events at Conakry Stadium, particularly the cases of torture and sexual violence, are systematically investigated, and promptly and impartially prosecuted, so as to guarantee to victims that the truth will be known, and justice and reparations granted, in accordance with the Convention and the Rome Statute, which Guinea ratified in 2003;

(b) Ensure that witnesses are provided with adequate protection and financial resources under a witness protection programme;

(c) Temporarily relieve of their duties, for so long as the investigation lasts, those members of the security forces who are suspected of having committed grave violations of human rights during the events at Conakry, while ensuring that the principle of the presumption of innocence is upheld;

(d) Temporarily relieve of their duties all members of the Government accused of grave violations of human rights committed during the events at Conakry and in particular Colonel Pivi and Moussa Tiegboro Camara;

(e) Cooperate closely with the preliminary investigation opened by the Office of the Prosecutor of the International Criminal Court with regard to these events so as to bring the perpetrators before the Court.

Forced confessions

(11) The Committee deplores the fact that no legal provision establishes the inadmissibility in courts of statements or confessions extracted under torture, except when such statements are made against a person accused of torture. The Committee is also deeply concerned that the use of torture to extract confessions is extremely widespread in police stations and gendarmerie posts as well as in military detention centres (arts. 2 and 15).

The State party should ensure that the Legislative Reform Commission lays down in legislation, without delay, a provision stipulating that confessions extracted under duress or through the use of torture shall be inadmissible as evidence in court. Accordingly, the State party should ensure that prosecutors, investigating judges and trial judges are made aware of the inadmissibility of statements obtained through the use of torture and of the obligation to open investigations when allegations of torture are brought to their attention. The State party should also ensure that detainees have prompt access to qualified medical personnel who are also trained in detecting physical and psychological evidence of torture and inhuman treatment, in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).

Impunity

(12) While taking note with satisfaction of the decision in the case of the *Public Prosecutor's Office v. Margis-Chef of the Gendarmerie Momo Bangoura and others*, the Committee is concerned that most acts of torture and ill-treatment are not investigated or prosecuted and go unpunished. It is also disturbed that the State party has not conducted investigations in the wake of numerous credible reports regarding acts of torture and ill-treatment that in some cases led to the deaths of detainees (arts. 12, 13 and 16).

The State party should:

(a) Take appropriate steps to ensure that all allegations of torture or ill-treatment are investigated promptly, thoroughly and impartially by independent courts, that the perpetrators of such acts are prosecuted and, if convicted, given sentences that are proportional to the severity of the acts, and that the victims or their families receive adequate compensation and reparation;

(b) Investigate the cases of the individuals mentioned by the Committee and inform the Committee of the results of the investigations opened as well as of any criminal and disciplinary proceedings under way.

Fundamental legal guarantees

(13) While taking article 9 of the Constitution and articles 116 and 120 of the Code of Criminal Procedure into account, the Committee is extremely concerned to have learned that, in practice, detainees do not enjoy all fundamental guarantees from the outset of their deprivation of liberty, as the Guinean delegation in fact noted. It is likewise concerned at the fact that the maximum duration of police custody stipulated by law is often exceeded (arts. 2, 11, 12 and 16).

The State party should take all necessary steps to ensure that under the law and in practice any persons deprived of liberty enjoy, from the outset of their deprivation of liberty, all fundamental legal guarantees as understood in the Committee's general comment No. 2, namely:

(a) The right to be informed of the reason for their arrest in a language they understand;

(b) The right to have access to an independent lawyer or legal assistance in the event of insufficient resources;

(c) The right to be examined by an independent doctor, preferably of their choice;

(d) The right to contact and to see a member of their family or the consular authorities if the person in detention is a foreigner;

(e) The right to appear before a competent, independent and impartial court within 48 hours;

(f) The right to an effective and prompt remedy as regards the legality of the detention.

Conditions of detention

(14) The Committee takes note with concern of the information received concerning conditions of detention, which indicate a prison overpopulation rate exceeding 400 per cent. (About 1,396 persons are now held in the prison in Conakry, which has a capacity of 300.) This situation is exacerbated by the many illegal temporary detentions, such as the case described by the delegation during the dialogue concerning a temporary detention that lasted for 14 years without the detainee ever being brought before a judge. Furthermore, the

Committee deplores the existence of insalubrious infrastructures, with very small living quarters and detainees occasionally being confined in containers without any light, the malnutrition and dehydration of detainees, the appalling sanitary conditions that have led to numerous deaths, and the lack of access to qualified medical personnel. It likewise deplores the fact that there is no separation of men, women and minors or of those awaiting trial and those who have been convicted within detention facilities, particularly those outside the capital, as the delegation acknowledged during the dialogue. Lastly, the Committee regrets the absence of any training of prison staff, who are generally "volunteers" who provide their services to prisoners and their families for a fee. It also notes with concern that visits are contingent on payments by families of sums of money amounting to as much as 100,000 Guinean francs, with the recurring threat that detainees may be tortured in the event that their families do not pay (arts. 2, 11, 12 and 16).

The State party should increase its efforts to improve the material conditions of detention in accordance with the relevant provisions of the Standard Minimum Rules for the Treatment of Prisoners, which are currently under review, by:

(a) Reducing the high rate of prison overpopulation, particularly by making greater use of non-custodial measures, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), adopted by the General Assembly in resolution 45/110 of 14 December 1990;

(b) Avoiding long periods of pretrial detention and ensuring that persons in pretrial detention are provided with fair and speedy trials;

(c) Ensuring that minors are separated from adults and women from men, and that detainees are held separately from convicts;

(d) Taking preventive measures to avoid the spread of infectious disease caused by uncleanliness in places of detention and ensuring that detainees have prompt access to qualified medical personnel;

(e) Ensuring that prison staff are trained and that their wages are paid by the State or the penal facilities, and not by prisoners or members of their families, and taking all necessary measures to combat widespread corruption in the prison environment.

Pending its ratification of the Optional Protocol to the Convention against Torture and the implementation of the national preventive mechanism, the State party should also establish a national monitoring system for all places of detention, and cooperate with non-governmental organizations for this purpose, in particular by giving them access to facilities for the deprivation of liberty.

Secret detention facilities

(15) The Committee takes note of the information provided by the delegation to the effect that there are no longer any secret detention facilities in the State party. It is nevertheless concerned at reports that some persons are still being held in unofficial detention centres, including the military prison on Kassa Island, which was supposed to have been officially closed in January 2010. The Committee is also concerned by the case of 33 persons arrested on 24 and 25 September 2013 in Conakry who were transferred and secretly detained at the Soronkony military camp for more than a week. These detainees were subjected to numerous acts of torture, and one of them died. Despite the compensation of 50 million Guinean francs paid to the victims, the Committee deplores that the application made by the Prosecutor's Office to the Dixinn Court of first instance is still awaiting the opening of judicial proceedings against the perpetrators (arts. 2, 11 and 12).

The State party should:

(a) Close, as a matter of urgency, the secret detention facilities and ensure that the persons detained there enjoy all legal guarantees, particularly as regards the right to be brought before a judge within a maximum of 48 hours after being arrested or detained, the right to consult a lawyer of their choice and the right to be examined by a doctor, preferably of their choice;

(b) Investigate and ensure that no person is detained in secret or unofficial detention facilities, prevent any type of unlawful detention on its territory and investigate any allegations relating to such incidents;

(c) Ensure that detention takes place in an official detention facility and that the identity of the detainee and the place of detention are recorded in a central register that may be consulted by the persons concerned.

Violence against women

(16) The Committee is extremely concerned at reports of widespread violence affecting more than 90 per cent of women and girls. It deplores that prompt and effective investigations are conducted only rarely because of, inter alia, the difficulties that victims of sexual violence or domestic violence have in gaining access to justice and the lack of shelters where they can take refuge. The Committee is extremely concerned that articles 321 and 322 of the Criminal Code classify rape and sexual abuse, which are extremely widespread, as "immoral acts" and "indecent assault", respectively, and not as crimes against the person, particularly given the impunity that prevails in this area, whether they are committed by law enforcement officers or by private individuals (arts. 2, 12, 13 and 16).

The State party should:

(a) Step up its efforts and urgently enforce effective mechanisms to prevent and punish all forms of violence against women and girls, including by ensuring that all acts of violence are promptly, effectively and impartially investigated and prosecuted, that perpetrators, including law enforcement officers, are brought to justice and that victims are provided with redress. The State party should establish not only an effective complaints mechanism for women and girls but also a monitoring mechanism to fulfil its positive duty to prevent all forms of violence against them;

(b) Ensure that the Legislative Reform Commission categorizes rape and sexual abuse, in the legislative texts under revision, as crimes against the person and not as "immoral acts and indecent assault", and includes in the Criminal Code the various forms of sexual violence, including marital rape and domestic violence;

(c) Launch prevention programmes for combating the stigmatization of women victims of violence, create empowerment programmes for women, set up shelters for victims, and conduct awareness-raising campaigns, since rape is still a major taboo in the country and a cause of exclusion from both the family and society.

Female genital mutilation

(17) Despite the adoption of Act No. L010/AN/2000 of 10 July 2000 and articles 405 et seq. of the Children's Code, the Committee notes with great concern the statement of the Guinean delegation that there has been no prosecution or conviction under that law to date. The Committee therefore doubly deplores the fact that, in January 2013, 96 per cent of girls and women were still subject to female genital mutilation, as indicated by the Guinean delegation during the consideration of the State party's second periodic report to the Committee on the Rights of the Child at its sixty-second session, in 2013 (arts. 2, 12, 13, 14 and 16).

In light of the high prevalence of female genital mutilation and the ineffectiveness of the relevant laws, the Committee recommends that the State party should, with a view to eradicating this practice, adopt a holistic approach and formulate a national plan of action incorporating the following measures:

(a) Urgently strengthen measures to prevent and eliminate the practice of female genital mutilation by ensuring that its existing laws on the subject are effectively enforced in accordance with the Convention. To this end, it should facilitate the submission of complaints by victims, conduct prompt and effective investigations, prosecute those responsible and impose appropriate penalties on the guilty parties commensurate with the serious nature of their crimes;

(b) Expand national awareness-raising campaigns, in particular among families, on the harmful effects of the practice and devise programmes to offer alternative sources of income to those who perform female genital mutilation as a means of livelihood, as recommended in 2007 by the Committee on the Elimination of All Forms of Discrimination against Women at its thirty-ninth session (CEDAW/C/GIN/CO/6, para. 25);

(c) Provide adequate redress, suitable compensation, and the fullest possible rehabilitation to victims;

(d) Set up shelters for girls and women who have left their homes to avoid being subject to such practices.

In general, the State party should ensure that its customary law and practices are compatible with its human rights obligations, particularly those arising from the Convention.

Trafficking in persons

(18) While noting with satisfaction the establishment in 2012 of a special unit to combat trafficking in persons, the Committee nevertheless remains very concerned by reports of internal and cross-border trafficking (in particular with Nigeria, Côte d'Ivoire, Benin and Senegal) of men, women and children for purposes of sexual exploitation, forced labour and domestic slavery. The Committee is also concerned by the lack of clarity in article 337 of the Criminal Code on the various forms of trafficking and servitude, which hampers enforcement of the law and causes legal uncertainty for the victims (arts. 2, 8, 9, 12 and 16).

The State party should:

(a) Step up its efforts to prevent and combat trafficking in persons, particularly women and children, including by implementing its anti-trafficking legislation, providing protection for victims and ensuring that they have access to the courts, to medical, social and legal services and to means of rehabilitation and reintegration;

(b) Invite the Legislative Reform Commission to amend article 337 of the Criminal Code to categorize the different forms of trafficking in persons as crimes punishable by law;

(c) Ensure adequate conditions so that victims can exercise their right to make a complaint;

(d) Conduct prompt, impartial and effective investigations into cases of trafficking and ensure that convicted individuals are given sentences commensurate with the serious nature of their crimes;

(e) Conduct national awareness-raising campaigns and provide training for law enforcement officers;

(f) Actively engage in a policy of mutual legal assistance with other countries of origin, destination or transit in the cross-border trafficking of persons.

Excessive use of force

(19) The Committee is very concerned by credible reports that the national police, the national gendarmerie, the crime squad, the police special rapid intervention force, the police rapid intervention squad, the banditry control squad, the mobile intervention and security force, the Red Berets special presidential guard and the special electoral process security force, under the effective control of the State, make widespread, excessive and disproportionate use of force, particularly of firearms and knives, and carry out many acts of torture, including at peaceful political, social and student demonstrations (arts. 2, 10, 12, 13 and 16).

The State party should:

(a) Ensure that law enforcement officers receive training that emphasizes the absolute prohibition of torture, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted in Havana in 1990, and the fact that they may be held liable for excessive use of force and acts of torture;

(b) Expedite the investigation and prosecution of such cases and sanction officials found guilty of such offences with appropriate penalties.

Redress

(20) The Committee is concerned that current criminal legislation does not contain any provisions guaranteeing redress for damage caused to victims of torture. Similarly, there is no legislation in place allowing redress to be sought for damage resulting from acts of torture (arts. 2, 12, 13 and 14).

The State party should:

(a) Ensure that the Reform Commission adopts legislative measures to guarantee that victims of torture and ill-treatment benefit from all forms of redress, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, in accordance with general comment No. 3 (2012) on the implementation of article 14 by States parties;

(b) Provide fair and adequate redress and rehabilitation to all victims of torture, violence against girls and women, trafficking in persons and prison violence;

(c) Provide fair and adequate redress to ensure the fullest possible rehabilitation for all the victims of torture and sexual violence that occurred during the events of September 2009 at Conakry Stadium;

(d) Provide information on the redress provided to the victims mentioned in paragraph 9.

The Committee draws the attention of the State party to its general comment No. 3, which clarifies the content and scope of States parties' obligations with respect to the provision of full redress to victims of torture.

Independence of the judiciary

(21) The Committee is concerned at allegations regarding the exertion of pressure on and manipulation of members of the judiciary and is concerned by the lack of effective independence of the judiciary, as indicated by the delegation during the dialogue. The

Committee is also concerned by the fact that the Supreme Council of Justice is chaired by the President of the Republic, which makes it appear to be dependent on the executive branch. Finally, the Committee notes with regret the inadequacy of the budget allocated to the judiciary (0.5 per cent of the national budget) to carry out its mandate; this leads to shortfalls in staff, infrastructure and the payment of judges' salaries (arts. 2 and 12).

The State party should:

(a) Take effective measures to guarantee the independence of the judiciary, in accordance with the relevant international standards, including the Basic Principles on the Independence of the Judiciary (adopted by the General Assembly in 1985), in particular the principle of guaranteed tenure;

(b) Take appropriate measures to guarantee and protect the independence of the judiciary and ensure that its operations are free from any pressure or interference from the executive;

(c) Develop training programmes for members of the judiciary on the importance of the independence of the judiciary.

State of emergency

(22) The Committee is concerned by the frequent imposition of states of emergency and by restrictions on human rights that regularly give rise to violations of the Convention. It is further concerned by the promulgation of a state of emergency on 19 November 2010, during which a special unit of the Red Berets deployed throughout the country made systematic use of force against any person violating the curfew (art. 2).

The State party should limit the imposition of states of emergency to situations in which it is strictly necessary and, in such cases, ensure respect for the absolute prohibition of torture.

Juvenile justice

(23) While noting the adoption by the State party of the Children's Code (under Act No. L/2008/011/AN of 19 August 2008) and in particular its articles 310, 328 and 329, which provide for juvenile courts, mediation measures and non-custodial penalties, respectively, the Committee regrets that, as the delegation confirmed during the dialogue, the legislation is not applied in practice. The Committee regrets in particular that juveniles are frequently convicted for minor offences, that mediation measures and non-custodial penalties are very rarely used in practice, that minors are not kept separate from adults in places of deprivation of liberty and that they are regularly subjected to acts of torture or inhuman and degrading treatment (arts. 2, 10 and 16).

The State party should:

(a) Ensure that mediation measures are used more frequently and that juveniles are detained only as a last resort and for the shortest period possible;

(b) Ensure that minors who are deprived of their liberty are afforded full legal safeguards from the outset and that juveniles are kept completely separate from adults, in accordance with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), adopted by the United Nations General Assembly in its resolution 40/33 of 29 November 1985, and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), adopted by the General Assembly in its resolution 45/112 of 14 December 1990.

Non-refoulement

(24) The Committee regrets the absence of legislation concerning guarantees of non-refoulement of persons to countries where they face a real risk of being subjected to torture. It also regrets the lack of information and statistics on the number of asylum requests, refugees and forced expulsions (art. 3).

The State party should:

(a) Ensure that the Legislative Reform Commission introduces into the legislative texts under revision, in accordance with article 3 of the Convention, the principle of non-refoulement as well as the right to an appeal with suspensive effect against a decision of expulsion; the State party should also respect all guarantees in the context of asylum and expulsion procedures pending the outcome of appeals;

(b) Respect the principle of non-refoulement in accordance with article 3 of the Convention and the obligation to check whether there are substantial grounds for believing that the asylum seeker would be in danger of being subjected to torture or ill-treatment if expelled, in particular by systematically conducting individual interviews to evaluate the personal risk incurred by applicants.

Death penalty

(25) While taking note of the decision taken in 2002 by the Government of Guinea to establish a moratorium on the death penalty, the Committee regrets that capital punishment has not been abolished and that the Criminal Code still contains frequent provision for it. The Committee also notes with great regret reports that 28 convicted prisoners are still being held on death row (arts. 2 and 16).

The State party should:

(a) Ensure that the Legislative Reform Commission abolishes the death penalty in all legislation;

(b) Ensure that all persons held on death row are afforded the protection provided for under the Convention and are treated humanely;

(c) Ratify the Optional Protocol to the Convention and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

National Human Rights Commission

(26) Notwithstanding the considerable effort made by the State party towards adopting a law establishing a National Human Rights Commission, the Committee regrets the length of time that the implementation process has taken (art. 2).

The State party should adopt without delay an act establishing a National Human Rights Commission and provide it with the necessary human and financial resources to enable it to fulfil its mandate in an effective and independent manner, in conformity with the Principles Relating to the Status of National Institutions for the Promotion and Protection of Human Rights (the Paris Principles) (General Assembly resolution 48/134 of 20 December 1993).

Data collection

(27) The Committee regrets the absence of comprehensive, disaggregated data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment attributed to law enforcement personnel. The Committee also regrets the lack of data on physical and sexual violence against girls and women, domestic violence, female genital

mutilation, trafficking in persons, enforced disappearances, requests for asylum and cases of refoulement (arts. 2, 3, 11, 12, 13, 14 and 16).

The State party should collect and submit statistical data, disaggregated by age and sex of the victim, that would be useful in monitoring implementation of the Convention at the national level, particularly data on complaints, investigations, prosecutions and convictions related to acts of torture and ill-treatment attributed to law enforcement personnel. Statistical data should also be collected and submitted on physical and sexual violence against girls and women, domestic violence, female genital mutilation and enforced disappearances.

(28) The Committee encourages the State party to consider making the declaration under article 22 of the Convention, thereby recognizing the competence of the Committee to receive and consider communications from individuals.

(29) The Committee invites the State party to consider ratifying the core United Nations human rights instruments to which it is not yet a party, namely: the Optional Protocol to the Convention against Torture, which it signed on 16 September 2005, and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

(30) In light of its tardy submission of the initial report, and in order to ensure proper implementation of the Committee's recommendations, the State party is requested to disseminate the report widely, along with the present concluding observations, in the appropriate languages, through official websites, the media and non-governmental organizations. The State party should also work vigorously with the civil society to launch university programmes providing awareness and training to law enforcement agents with respect to the Committee's recommendations.

(31) The Committee requests the State party to submit, by 23 May 2015, information on the follow-up given to the following recommendations: (a) introduce or strengthen legal safeguards for persons held in custody; (b) conduct prompt, effective and impartial investigations; and (c) prosecute suspects and impose penalties on the perpetrators of torture or ill-treatment (see paragraphs 9, 10, 12 and 13 above). The Committee further requests additional information on the violence against girls and women mentioned in paragraphs 16 and 17, along with any pertinent statistical data.

(32) The Committee invites the State party to submit its next periodic report, which will be its second, by 23 May 2018. The Committee also invites the State party to agree, by 23 May 2015, to submit that report under the optional procedure whereby the Committee sends the State party a list of issues prior to submission of its periodic report. The replies of the State party to this list of issues will constitute its second periodic report under article 19 of the Convention.

65. Holy See

(1) The Committee against Torture considered the initial report of the Holy See (CAT/C/VAT/1) at its 1220th and 1223rd meetings, held on 5 and 6 May 2014 (CAT/C/SR.1220 and CAT/C/SR.1223), and adopted the following concluding observations at its 1245th, 1246th and 1247th meetings (CAT/C/SR.1245, CAT/C/SR.1246 and CAT/C/SR.1247) held on 21 and 22 May 2014.

A. Introduction

(2) The Committee welcomes the initial report of the Holy See (CAT/C/VAT/1), which follows the Committee's Guidelines on the form and content of initial reports (CAT/C/4/Rev.3) required under article 19 on the measures they have taken to give effect to their undertakings under the Convention against Torture and other Cruel, Inhuman or

Degrading Treatment or Punishment. However, it regrets that the report was submitted nine years late.

(3) The Committee also appreciates the open and constructive dialogue with the high-level delegation of the State party and the supplementary information provided during the examination of the report.

B. Positive aspects

(4) The Committee welcomes the fact that following the ratification of the Convention, the State party acceded to the Convention against Transnational Organized Crime, on 25 January 2012.

(5) The Committee also welcomes the State party's efforts to revise its legislation in areas of relevance to the Convention, including:

(a) The issuance *motu proprio* by Pope Francis of an Apostolic Letter "On the Jurisdiction of Judicial Authorities of Vatican City State in Criminal Matters", on 11 July 2013. The letter was promulgated and entered into force on 1 September 2013, establishing the exercise of penal jurisdiction by the Judicial Authorities of Vatican City State over crimes whose prosecution is required by international agreements ratified by the Holy See. This modified Holy See legislation, specifically Law No. VIII on Supplementary Norms on Criminal Law Matters, which became effective 1 September 2013, and which incorporates into the legal system the crime of torture, crimes against humanity and a definition of crimes against minors; and Law N. IX which amends the Criminal Code and the Code of Criminal Procedure to provide for jurisdiction over offenses committed by public officials and citizens abroad and to set standards governing extradition, judicial cooperation, mutual legal assistance, and other matters relevant to the Convention;

(b) The issuance by the Congregation for the Doctrine of the Faith of a Circular Letter to Assist Episcopal Conferences in Developing Guidelines for Dealing with Cases of Sexual Abuses of Minors Perpetrated by Clerics, on 3 May 2011, which confirms, as established in the 2001 *Motu Proprio Sacramentorum Sanctitatis Tutela*, that Bishops and Major Superiors are to refer all credible allegations of sexual abuse of minors by clerics to the Congregation for the Doctrine of the Faith. The Circular Letter also establishes, in its own words, that "the prescriptions of civil law regarding the reporting of such crimes to the designated authority should always be followed".

(6) The Committee also welcomes the efforts of the State party to amend its policies, programmes and administrative measures to give effect to the Convention, including:

(a) The clear condemnation, in the Holy See's report, of the use of torture and other acts of cruel, inhuman or degrading treatment or punishment as contrary to the dignity, integrity and identity of the human person and its references to the statements by several Popes against torture and against the death penalty, including Pope Benedict XVI's reminder, in 2007, to members of the International Commission for Catholic Prison Pastoral Care, which represents prison chaplains from 62 countries, stating "I reiterate that the prohibition against torture cannot be contravened under any circumstances";

(b) The establishment of a Special Office within the Governorate of the Vatican City State to oversee the implementation of international agreements to which the Holy See is a party, on 10 August 2013;

(c) The creation of the Pontifical Commission for the Protection of Minors, on 5 December 2013, to serve as an advisory committee to the Pope, and its members' statement on 3 May 2014 that they view ensuring accountability as especially important;

(d) The statement by Pope Francis, during a meeting with the International Catholic Child Bureau on 11 April 2014, acknowledging the damage done by the sexual abuse of children by some priests, in which the Pontiff affirmed that "we will not take one step backward with regards to how we will deal with this problem and the sanctions that must be imposed. On the contrary, we have to be even stronger."

(7) The affirmation by the head of the delegation that international treaties, including the Convention, ratified by the Holy See, and agreements made by the Holy See with other international subjects or other States take precedence over the domestic law of the Holy See.

C. Principal subjects of concern and recommendations

Scope of application of the Convention

(8) The Committee notes the Interpretative Declaration made by the Holy See in acceding to the Convention and statements in the report of the State party reinforced by the delegation during the dialogue, expressing the view that the Convention applies exclusively to the Holy See. The Committee further notes that the 2013 amendments to laws of the Holy See, referred to above, establish that public officials of the Holy See include, among other persons, (a) members, officials and personnel of the various organs of the Roman Curia and of the Institutions connected to it; and (b) papal legates and diplomatic personnel of the Holy See. The Committee's General Comment No. 2 recalls that States bear international responsibility for the acts and omissions of their officials and others acting in an official capacity or acting on behalf of the State, in conjunction with the State, under its direction or control, or otherwise under colour of law. This responsibility extends to actions and omissions of the public servants of a State party deployed on operations abroad. The Committee reminds States parties to the Convention that they are obligated to adopt effective measures to prevent their officials and others acting in an official capacity from perpetrating or instigating the commission of torture or ill-treatment and from consenting to or acquiescing in the commission of such violations by others, including non-State actors, in any situation in which they exercise jurisdiction or effective control.

The Committee notes that the Interpretative Declaration made by the State party is not consistent with the above-mentioned norms under its own law as well as the Convention. The Committee invites the State party to view the Interpretative Declaration in light of the aforementioned considerations, not excluding the possibility of reinterpretation or withdrawal. The Committee recalls that the State party's obligations under the Convention concern all public officials of the State party and other persons acting in an official capacity or under colour of law. These obligations concern the actions and omissions of such persons wherever they exercise effective control over persons or territory.

Definition of torture

(9) The Committee welcomes the adoption of Law No. VIII of 11 July 2013 which contains a definition of torture and other elements set forth in the Convention. The Committee notes that this Law refers to "the public official having judicial, judicial police or law enforcement functions, as well as whoever performs in an official capacity a similar or analogous role, and whoever, under their instigation or with their consent and acquiescence …" The Apostolic Letter states in paragraph 3 that the following persons are deemed public officials: "(a) members, officials and personnel of the various organs of the Roman Curia and of the Institutions connected to it. (b) Papal legates and diplomatic personnel of the Holy See. (c) Those persons who serve as representatives, managers or directors, as well as persons who even de fact manage or exercise control over the entities directly dependent on the Holy See and listed in the registry of canonical juridical persons kept by the Governorate of Vatican City State. (d) Any other person holding an administrative or judicial mandate in the Holy See, permanent or temporary, paid or unpaid, irrespective of that person's seniority." The Committee further recalls that article 4 of the

Convention requires States parties to ensure that "an attempt to commit torture and… an act by any person which constitutes complicity or participation in torture" is an offence under its criminal law. The Committee has expressed in its General Comment No. 3 that statutes of limitations should not be applicable to the crime of torture (arts. 1 and 4).

The Committee seeks confirmation that the State party fully complies with the requirements of the Convention that "all public officials or persons acting in an official capacity" are covered in line with article 1 of the Convention. It invites the State party to adopt effective measures to ensure that its definition of torture applies to all public officials, as established in the Convention, and that the State party discharges all its obligations under the Convention. The Committee further seeks clarification that "an attempt to commit torture and ... an act by any persons which constitutes complicity or participation in torture" is prohibited under its criminal law. The Committee reminds the State party that General Comment No. 3 states that statutes of limitations should not be applicable to the crime of torture and requests that the State party clarify that there is no statute of limitations for the offence of torture.

Prevention of torture and cruel, inhuman and degrading treatment or punishment

(10) The Committee notes that since 2001 Holy See officials have required mandatory reporting of all credible allegations of sexual abuse of minors by clergy to the Congregation for the Doctrine of the Faith in Vatican City State. The Committee appreciates the data provided by the delegation indicating that the Congregation for the Doctrine of the Faith confirmed 3,420 credible allegations of sexual abuse by priests between 2004–2013, resulting in the implementation of numerous canonical penalties meted out through an ecclesiastical penal process, including the defrocking of 848 priests and disciplining of 2,572 others such as through imposition of a life of prayer or penance. In its General Comment No. 2, the Committee recalls that State authorities or others acting in official capacity or under colour of law have an obligation to exercise due diligence to prevent violations of the Convention, including by non-State officials or private actors under their effective control, whenever they know or have reasonable grounds to believe that violations of the Convention are being committed.

(11) In this regard, the Committee regrets that the State party did not provide requested data on the number of cases in which the State party provided information to civil authorities in the places where the cases arose and in the places where the priests concerned are currently located. The Committee welcomes the assurance made by the delegation that Catholic clergy are instructed to report allegations of sexual abuse of minors perpetrated by clergy members to the civil authorities as well as to the Congregation for the Doctrine of the Faith. Nevertheless, the Committee is concerned by reports that the State party's officials resist the principle of mandatory reporting of such allegations to civil authorities.

(12) The Committee is further concerned by numerous reports of cases in which clergy accused or convicted by civil authorities of such offenses were transferred to other dioceses and institutions where they remained in contact with minors and others who are vulnerable, and in some cases committed abuse in their subsequent placements. Such allegations appear in the reports of commissions and investigations undertaken in diverse countries. During the dialogue with the State party, the Committee raised the case of Father Joseph Jeyapaul, the case of Father Peter Kramer, and the findings reached by a grand jury in Philadelphia, United States, in 2005, as illustrative of these concerns (art. 2).

The State party should ensure that Holy See officials and other public officials of the Holy See take effective measures to monitor the conduct of individuals under their effective control, to stop and sanction such conduct in any case where they become aware of credible allegations of violations of the Convention, and to take other

measures within their control to prevent the commission of subsequent violations by the individuals concerned, including to:

(a) Continue to develop and implement programmes and policies to prevent violations of the Convention;

(b) Ensure that individuals that are subject to an allegation of abuse brought to the attention of the Congregation for the Doctrine of the Faith or other officials of the State party are immediately suspended from their duties pending the investigation of the complaint, to guard against the possibility of subsequent abuse or intimidation of victims;

(c) Ensure effective monitoring of the placements of all clergy that are under investigation by the Congregation for the Doctrine of the Faith and prevent the transfer of clergy who have been credibly accused of abuse for the purposes of avoiding proper investigation and punishment of their crimes. For those found responsible, apply sanctions, including dismissal from clerical service;

(d) Ensure that all State party officials exercise due diligence and react properly to credible allegations of abuse, subjecting any official that fails to do so to meaningful sanctions;

(e) Take effective measures to ensure that allegations received by its officials concerning violations of the Convention are communicated to the proper civil authorities to facilitate their investigation and prosecution of alleged perpetrators. The State party should provide data to the Committee in its next periodic report on the number of cases in which it provided information to civil authorities both in the places where cases arose and in the places where the persons concerned are currently located.

Impunity

(13) The Committee appreciates the confirmation provided regarding the ongoing investigation under the Vatican City State Criminal Code of allegations of sexual abuse of minors by Archbishop Josef Wesolowski, former papal nuncio to the Dominican Republic. The Committee notes that the Republic of Poland has reportedly requested the extradition of Archbishop Wesolowski. The Committee also is concerned that the State party did not identify any case to date in which it has prosecuted an individual responsible for the commission of or complicity or participation in a violation of the Convention (arts. 4, 5, 6, 7 and 8).

The State party should ensure that its competent authorities proceed to a prompt and impartial investigation of Archbishop Wesolowski and any other persons accused of perpetrating or being complicit in violations of the Convention who are nationals of the State party or are present on the territory of the State party. If warranted, the State party should ensure such persons are criminally prosecuted or extradited for prosecution by the civil authorities of another State party. The Committee requests the State party to provide it with information on the outcome of the investigation concerning Archbishop Wesolowski.

Cooperation with civil and criminal proceedings

(14) The Committee is concerned by reports it has received of cases in which the State party has declined to provide information to civil authorities in connection with proceedings relating to allegations that clergy members committed violations of the Convention, despite the fact that since 2001 the Congregation for the Doctrine of the Faith in the Vatican City State has had responsibility for receiving and investigating all allegations of sexual abuse of minors by Catholic clergy. The Committee expresses concern

about allegations that in 2013 the papal nuncio to Australia invoked diplomatic immunity in refusing to provide archival documentation to assist the New South Wales Special Commission of Inquiry into sex abuse. The Committee recalls that article 9 of the Convention obligates States parties to "afford one another the greatest measure of assistance" in connection with criminal proceedings related to violations of the Convention, "including the supply of all evidence at their disposal necessary for the proceedings" (art. 9).

The State party should take effective steps to ensure the provision of information to civil authorities in cases where they are carrying out criminal investigations of allegations of violations of the Convention perpetrated by Catholic clergy or acquiesced to by them. The State party should ensure the procedures for requesting such cooperation are clear and well-known to the civil authorities and that requests for cooperation are responded to promptly.

Basic legal safeguards

(15) The Committee appreciates the information provided by the State party in its report and at the dialogue concerning legal protections for persons deprived of their liberty in the State party provided in the Criminal Code, Code of Criminal Procedure, and 2012 draft regulations of the Department of Security Services and Civil Protection. The Committee regrets that information was not provided as to whether these documents incorporate the particular legal safeguards against torture that the Committee has called on all States parties to ensure for all persons deprived of their liberty (arts. 2, 13, 15 and 16).

The State party should ensure that its laws and regulations provide for the right of all persons deprived of their liberty to enjoy the legal safeguards against torture enumerated in the Committee's General Comment No. 2, including ensuring the right of all detainees to receive independent legal assistance, independent medical assistance, and to contact relatives from the moment of deprivation of liberty. The State party should monitor the provision of such safeguards by its public officials and ensure that any failure to provide such safeguards as required results in disciplinary or other penalties.

Complaints and prompt, thorough and impartial investigations

(16) The Committee welcomes the amendments to the Criminal Code and Code of Criminal Procedure of the Vatican City State that make it clear that authorities should prosecute allegations of violations of the Convention by citizens and officials. The Committee also welcomes information provided that the Pontifical Commission for the Protection of Minors, established by Pope Francis, will seek to ensure accountability and its members have announced that they plan to make specific proposals on raising awareness "regarding the tragic consequences of sexual abuse and of the devastating consequences of not listening, not reporting suspicion of abuse, and failing to support victims/survivors and their families". To date there has been no information provided to the Committee as to the Pontifical Commission's term, investigative powers, and ability to report publicly (arts. 12 and 13).

The State party should:

(a) Establish an independent complaints mechanisms to which victims of alleged violations of the Convention can confidentially report allegations of abuse and which has the power to cooperate with the State party's authorities as well as civil authorities in the location where the alleged abuse occurred;

(b) Ensure that organs charged with carrying out investigations into allegations of violations of the Convention by public officials of the Holy See, including the Office of the Promoter of Justice, are independent with no hierarchical connection

between the investigators and the alleged perpetrators. Ensure that such bodies carry out investigations promptly, thoroughly, and impartially;

(c) Clarify whether the Pontifical Commission for the Protection of Minors established in December 2013 should have the full power to investigate cases of alleged violations of the Convention, ensure that the results of any of its investigations are made public and that they are promptly acted upon by officials with a prosecutorial function, within a specific deadline.

Concordats and other agreements

(17) The Committee is concerned at allegations that concordats and other agreements negotiated by the Holy See with other States may effectively prevent prosecution of alleged perpetrators by limiting the ability of civil authorities to question, compel the production of documentation by, or prosecute individuals associated with the Catholic Church (arts. 2, 12, 13 and 16).

The State party should consider reviewing its bilateral agreements concluded with other States, such as concordats, with a view to fulfilling its obligations under the Convention and preventing the agreements from serving to provide individuals alleged to have violated the Convention or believed to possess information concerning violations of the Convention with protection from investigation or prosecution by civil authorities as a result of their status or affiliation with the Catholic Church.

Redress

(18) While noting that many dioceses and religious orders provided financial settlements to victims of abuse, the Committee remains deeply concerned at the reported inability to obtain redress experienced by many alleged victims of violations of the Convention perpetrated by or with the acquiescence of persons acting in an official capacity for the State party. The Committee is particularly concerned about allegations of past instances in which the State party has acquiesced to or authorized actions taken by certain church officials to protect assets from seizure by civil authorities for the purpose of providing redress to victims. The Committee is also concerned about the State party's response to the continued refusal by the four religious orders that ran the Magdalene laundries in Ireland to contribute to a redress fund for individuals subjected to abuse in those facilities. The Committee recalls that in accordance with General Comment No. 3, the concept of redress includes restitution, compensation, rehabilitation, satisfaction and the right to truth, and guarantees of non-repetition (arts. 12, 13, 14 and 16).

The State party should:

(a) In accordance with article 14 of the Convention and General Comment No. 3, take steps to ensure that victims of sexual abuse committed by or with the acquiescence of the State party's officials receive redress, including fair, adequate and enforceable right to compensation and as full rehabilitation as possible, regardless of whether perpetrators of such acts have been brought to justice. Appropriate measures should be taken to ensure the physical and psychological recovery and social reintegration of the victims of abuse;

(b) Encourage the provision of redress by individual religious orders to victims of violations of the Convention carried out by them and take additional steps to ensure that victims obtain redress as needed, including in the case of the Magdalene Laundries.

Sale and abduction of children

(19) The Committee is concerned by the numerous cases of taking newly born children away from their biological mothers by members of Catholic congregations in several

countries, who were subsequently placed in orphanages or given to adoptive parents abroad. As in the case of the Magdalene laundries, the Committee is concerned at the absence of information on any measures taken to find such children and return them to their biological mothers.

The State party should:

(a) Request that the concerned congregations provide the relevant information in their possession about the fate of the children in question with a view to returning them to their biological mothers;

(b) Take all necessary measures to combat and prevent the repetition of such practices in the future.

Non-refoulement and asylum

(20) The Committee notes with appreciation the State party's confirmation that the Holy See would not expel, return or extradite a person to a State where the person might be tortured, and that amendments to the Criminal Code and Code of Criminal Procedure attached to the 13 July 2013 Apostolic Letter of Pope Francis elaborate on this matter. The Committee regrets, however, that there was no data provided in response to inquiries concerning the number of asylum requests received and granted, particularly in view of the statement that asylum applications are dealt with and adjudicated by the Italian Government's authorities (art. 3).

The Committee recommends that the State party provide in its next report data on the number of asylum requests received by authorities of the State party located in its territory or abroad since 2002, as well as the number granted, and whether any asylum seeker was returned or refused asylum and in which countries. The State party should ensure that its authorities monitor treatment of any persons seeking asylum who are sent to Italy to ascertain that they are not subsequently expelled to a place where they might be in danger of being subjected to torture or ill-treatment.

Training of the Gendarmerie Corps

(21) While noting that the Gendarmerie Corps receives training in human rights, the Committee is concerned that they are not provided with specific training on the provisions of the Convention, including the absolute prohibition of torture, and that medical professionals dealing with persons deprived of liberty and asylum-seekers do not receive training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (the Istanbul Protocol) (art. 10).

The State party should ensure that training for the Gendarmerie Corps includes the absolute prohibition of torture, other provisions of the Convention, and the Committee's conclusions, decisions and General Comments. It should also ensure that the Gendarmerie Corps and medical professionals and relevant law enforcement officers in the State party receive training in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (the Istanbul Protocol).

Statistical data

(22) The Committee regrets the absence of comprehensive and disaggregated data on complaints and investigations of cases amounting to violations of the Convention.

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention, including data on complaints and investigations of

cases amounting to violations of the Convention as well as on means of redress, including compensation and rehabilitation, provided to the victims.

(23) The Committee invites the State party to consider ratifying the core international human rights instruments to which it is not yet a party, namely the Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights and their Optional Protocols, as well as the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of Persons with Disabilities and its Optional Protocol, and the Convention for the Protection of All Persons from Enforced Disappearance.

(24) The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

(25) The State party is invited to submit its common core document, in accordance with the requirements contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6).

(26) The Committee requests the State party to provide, by 23 May 2015, follow-up information in response to the Committee's recommendations related to the prevention of torture and cruel, inhuman and degrading treatment or punishment, and on impunity, as contained in paragraphs 10 and 11 of the present document. In addition, the Committee requests follow-up information on complaints and investigations and redress, as contained in paragraphs 14 and 16 of the present document.

(27) The State party is invited to submit its next report, which will be the second periodic report, by 23 May 2018. For that purpose, the Committee invites the State party to accept, by 23 May 2015, to report under its optional reporting procedure, consisting in the transmittal, by the Committee to the State party, a list of issues prior to the submission of the report. The State party's response to this list of issues will constitute, under article 19 of the Convention, its next periodic report.

66. Lithuania

(1) The Committee against Torture considered the third periodic report of Lithuania (CAT/C/LTU/3) at its 1230th and 1233rd meetings, held on 12 and 13 May 2014 (see CAT/C/SR.1230 and CAT/C/SR.1233), and adopted the following concluding observations at its 1242nd and 1243rd meetings (see CAT/C/SR.1242 and CAT/C/SR.1243), held on 20 May 2014.

A. Introduction

(2) The Committee expresses its appreciation to the State party for accepting the optional reporting procedure and for having submitted on time its third periodic report (CAT/C/LTU/3) thereunder, as it improves the cooperation between the State party and the Committee and focuses the examination of the report as well as the dialogue with the delegation.

(3) The Committee appreciates the quality of its dialogue with the State party's high-level multisectoral delegation and of the responses provided orally to the questions and concerns raised during the consideration of the report.

B. Positive aspects

(4) The Committee welcomes the fact that, since the consideration of the second periodic report, the State party has ratified or acceded to the following international instruments:

(a) Convention on the Rights of Persons with Disabilities and its Optional Protocol, on 18 August 2010;

(b) Council of Europe Convention on Action against Trafficking in Human Beings, on 7 July 2012;

(c) Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 6 November 2012;

(d) 1961 Convention on the Reduction of Statelessness, on 22 July 2013;

(e) International Convention for the Protection of All Persons from Enforced Disappearance, on 14 August 2013;

(f) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 14 January 2014.

(5) The Committee welcomes the State party's efforts to revise its legislation in areas of relevance to the Convention, including:

(a) Adoption of Law No. XI-303 supplementing the Criminal Code, making criminal liability for hate crimes more stringent, and of the new paragraph 13 of article 60 of the Criminal Code, under which hate crimes are considered as an aggravating circumstance, on 16 June 2009;

(b) Amendments to article 176 of the Code of Criminal Procedure, establishing the maximum length of pretrial detention, on 21 September 2010;

(c) Amendments to articles 100 and 103 of the Criminal Code, expanding the range of criminal acts covered, on 22 March 2011;

(d) Law on Protection against Domestic Violence, entry into force on 15 December 2011;

(e) Law on Probation, entry into force on 1 July 2012;

(f) Amendments to the Lithuanian Citizenship Act, decreasing from 10 to 5 years the requirements of stay for stateless persons, introduced in May 2013 after the State's accession to the 1961 Convention on the Reduction of Statelessness;

(g) Amendments to the Law on the Legal Status of Aliens, 24 October 2013;

(h) Amendments to the law on the Seimas Ombudsman, whose office will exercise the national preventive mechanism functions under the Optional Protocol to the Convention, on 1 January 2014;

(i) Amendments to the Criminal Code and the introduction of a new article 147, paragraph 2, of the Criminal Code, expanding criminal liability in relation to trafficking in human beings.

(6) The Committee also welcomes the efforts of the State party to amend its policies, programmes and administrative measures to give effect to the Convention, including:

(a) National Strategy for the Elimination of Violence against Women;

(b) Hygiene norm HN 37:2009 entitled "Police detention facilities: general health safety requirements", approved on 29 September 2009;

(c) Strategy for the Renovation of Places of Imprisonment, approved by government resolution on 30 September 2009;

(d) National Programme for Drug Control and Drug Addiction Prevention 2010–2016, approved on 4 November 2010;

(e) Amendments to the Regulations for Examination of Requests for Pardon, Presidential Decree No. 1K-852 of 11 November 2011;

(f) Programme for the Optimization of the Operations of Police Detention Facilities 2009–2015;

(g) Plan of Implementing Measures 2009–2017 in relation to the Strategy for the Renovation of Places of Imprisonment;

(h) National Programme for Prevention of and Response to Violence against Children 2011–2015;

(i) National Programme for the Prevention of Domestic Violence and for Victim Support 2014–2020.

C. Principal subjects of concern and recommendations

Definition of torture

(7) Recalling its previous concluding observations (CAT/C/LTU/CO/2, para. 5), the Committee is concerned that the definition of torture as contained in article 1 of the Convention has not been incorporated into national law, which may create loopholes for impunity, as outlined in general comment No. 2 (2007) on the implementation of article 2 by States parties (art. 1).

The State party should amend its legislation to include in the Criminal Code a definition of torture that is in conformity with the Convention and covers all the elements contained in article 1, including the inflicting of torture on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Torture as a specific criminal offence

(8) The Committee is concerned that since the Criminal Code does not contain a separate article for penalizing torture, the penalties for acts of torture have been incorporated into different articles of the Criminal Code, and are not appropriate punishment for such criminal offences, taking into account their gravity. In addition, the Committee is concerned that article 103 of the Criminal Code, which provides for criminal liability for individuals who inflict torture, only covers persons protected under international humanitarian law (arts. 2 and 4).

The State party should amend its legislation to include torture as a specific offence in the Criminal Code, with appropriate penalties for acts of torture that take into account their grave nature, as set out in article 4, paragraph 2, of the Convention.

Statute of limitations for acts of torture

(9) The Committee is concerned that paragraph 5 of article 95 of the Criminal Code, which lists crimes that are not subject to a statute of limitations, includes acts of torture only against persons protected under international humanitarian law (arts. 2 and 4).

The State party should ensure that there is no statute of limitations for acts of torture, including with regard to persons not protected under international humanitarian law, so that acts of torture and attempts to commit torture can be investigated, prosecuted and punished without a time bar.

Fundamental legal safeguards

(10) The Committee is concerned that detained persons do not enjoy in practice all the fundamental legal safeguards against torture and ill-treatment that should be afforded from the very outset of deprivation of liberty, such as the right to be informed of and understand their rights, the right to have access to a lawyer, the right to an independent doctor and the right to inform a relative or person of their choice (arts. 2, 12, 13 and 16).

The State party should take effective measures to guarantee that all detained persons are afforded, by law and in practice, all fundamental legal safeguards from the outset of deprivation of liberty, in particular the rights to be informed of and understand their rights, to prompt access to a lawyer and, if necessary, to legal aid; the right to notify a member of their family or another appropriate person of their own choice; and the right to have access to a medical examination by an independent doctor and, if possible, a doctor of their choice, in accordance with international standards. All health-related tasks in police stations should be performed by qualified medical personnel.

Pretrial and administrative detention

(11) The Committee is concerned at the duration of and the high number of persons held in pretrial and administrative detention and that pretrial detention is not used as a measure of last resort. It is also concerned that remand prisoners may be returned from prison to police custody several times and that persons can be held in police arrest houses for long periods, serving consecutive penalties for administrative offences. In addition, it is concerned at the placement of minors in "socialization centres", which amounts to administrative detention, and their placement in "relaxation rooms" for violations of discipline, which amounts to solitary confinement (arts. 2, 10 and 16).

The State party should:

(a) Adopt all necessary measures to reduce resort to pretrial detention and its duration, ensure that pretrial detainees are brought before a judge without delay, and eliminate detention for administrative offences;

(b) Review "socialization centres" where minors are held in de facto administrative detention and ensure effective monitoring of such institutions in order to prevent any breach of the Convention;

(c) Ensure that there is minimal detention on remand in police stations, even for a few days, and that persons remanded in custody are always promptly transferred to a remand centre;

(d) Take steps, including of a legislative nature, to ensure that prisoners are not returned to police detention facilities and that each case is subject to the approval of a prosecutor under judicial oversight;

(e) Provide training to law enforcement and judicial professionals on alternatives to incarceration, such as probation, mediation, community service and suspended sentences, taking into account the provisions of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules).

Life-sentenced prisoners

(12) While noting the entry into force in 2012 of the Law on Probation, the Committee is concerned that article 158 of the Criminal Punishment Enforcement Code prohibits life-sentenced prisoners from being released on parole unless the life sentence is replaced by fixed-term imprisonment. It is also concerned that life-sentenced prisoners are detained separately from the rest of the prison population (arts. 2, 11 and 16).

The Committee recommends that the State party take steps to ensure that there is no blanket prohibition for life-sentenced prisoners to apply for release on parole for good reasons. Measures should be taken to integrate life-sentenced prisoners into the general prison population.

Domestic violence

(13) The Committee is concerned that domestic violence does not constitute a separate crime in the Criminal Code (arts. 2, 12, 13, 14 and 16).

The State party should:

(a) Amend its legislation to ensure that domestic violence is a separate crime in the Criminal Code;

(b) Ensure that victims of domestic violence benefit from protection and have access to medical and legal services, including psychosocial counselling, to redress, including rehabilitation, and to safe and adequately funded shelters;

(c) Compile and provide the Committee with disaggregated data on the number of complaints, investigations, prosecutions and sentences handed down for acts of domestic violence, on the provision of redress to the victims and on the difficulties experienced in preventing such acts.

Trafficking in human beings

(14) While amendments have been made to the Criminal Code in relation to trafficking in human beings, the Committee is concerned that the State party remains a country of origin, transit and destination of human trafficking and is registering a rise in the number of cases. It is also concerned that six Lithuanian nationals from an organized crime gang charged with trafficking in women have not been sentenced since 2010 (arts. 2, 10, 12, 13 and 16).

The State party should:

(a) Take effective measures to prevent human trafficking, including vigorous enforcement of anti-trafficking legislation and enhancement of international cooperation to combat trafficking, in particular for the purpose of sexual exploitation;

(b) Continue to conduct specialized training for the police, prosecutors and judges, migration officers and border police, including on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime and on effective prevention, investigation, prosecution and punishment of acts of trafficking, and continue nationwide awareness-raising and media campaigns about the criminal nature of such acts;

(c) Promptly, effectively and impartially investigate, prosecute and punish trafficking in persons and related practices;

(d) Provide redress to victims of trafficking.

National human rights institution

(15) The Committee is concerned at the absence in the State party of a national human rights institution in conformity with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). It is also concerned as to whether the Seimas Ombudsman will have sufficient financial and staffing resources to carry out both the mandate of the national human rights institution and that of the national preventive mechanism under the Optional Protocol to the Convention (art. 2).

The State party should:

(a) Amend its legislation to expand the mandate of the Seimas Ombudsman to function effectively as a national human rights institution in full compliance with the Paris Principles, with a view to seeking accreditation from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights;

(b) Allocate adequate financial and staffing resources to enable the Seimas Ombudsman to function effectively as both the national human rights institution and as the national preventive mechanism in compliance with the Optional Protocol to the Convention.

Investigations in the context of countering terrorism

(16) While noting that the Prosecutor General's Office opened on 13 February 2014 a pretrial investigation in relation to article 292, paragraph 3, of the Criminal Code, the Committee is concerned that the Parliamentary investigation failed to determine whether Central Intelligence Agency detainees were held in or transited through Lithuanian territory and that the pretrial investigation launched by the Prosecutor General's Office was terminated owing to the applicability of the statute of limitations, which precludes disciplinary action, and the fact that the file constitutes an official secret (arts. 2, 3, 12, 13 and 16).

The Committee:

(a) Urges the State party to complete the investigation into allegations of its involvement in the Central Intelligence Agency rendition and secret detention programmes within a reasonable time. It also recommends that the State party inform the public and ensure that its investigation process is transparent;

(b) Requests the State party to provide it with an update on the outcome of the pretrial investigation initiated by the Prosecutor General's Office in relation to article 292, paragraph 3, of the Criminal Code regarding the unlawful transportation of persons across the State border.

Asylum seekers

(17) The Committee is concerned about the detention of all asylum seekers, throughout the asylum procedure, at the Foreigners' Registration Centre in Pabrade, which lacks adequate reception conditions, including social, psychological and rehabilitation services. Traumatized persons and those with specific needs, including women, are not housed separately. The Centre is also used as an administrative detention facility for migrants in an irregular situation. It is also in need of renovation (arts. 3, 14 and 11).

The State party should:

(a) Refrain from detaining asylum seekers and illegal immigrants for prolonged periods and use the detention of asylum seekers only as a measure of last resort for as short a period as possible;

(b) Promote alternatives to detention and revise policy in order to bring it into line with the Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum Seekers and Alternatives to Detention published by the Office of the United Nations High Commissioner for Refugees;

(c) Put in place a mechanism to identify persons with special needs and possible victims of torture, and provide legal and practical mechanisms to ensure full redress for torture victims;

(d) Proceed with the announced reconstruction of the Foreigners' Registration Centre, in which vulnerable persons will be offered separate accommodation.

Training

(18) The Committee is concerned at the absence of specific methodologies to evaluate the effectiveness, including the impact on the number of cases of torture and ill-treatment, of the training and educational programmes on provisions of the Convention for law enforcement personnel, prison staff, border guards, medical personnel, prosecutors and judges. It is also concerned that training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) is not provided to all medical professionals dealing with persons deprived of liberty and asylum seekers (art. 10).

The State party should:

(a) Further develop and strengthen training programmes to ensure that all public officials, including law enforcement, prison and immigration officers, as well as judges, are aware of the provisions of the Convention;

(b) Provide training on the Istanbul Protocol for medical personnel and other officials who deal with detainees and asylum seekers and who are involved in the investigation and documentation of cases of torture;

(c) Develop methodologies to assess the effectiveness and impact of training programmes on the prevention and absolute prohibition of torture and ill-treatment.

Conditions of detention in police arrest houses

(19) The Committee is concerned that material conditions, such as hygiene, access to natural and artificial light, ventilation, the partitioning of sanitary facilities and clean mattresses and bedding, in police arrest houses, as well as the regimen offered to detained persons in terms of daily outdoor exercise in certain police facilities, are not in conformity with international standards. The Committee is also concerned that administrative detainees can be held in such cells for several months. It is particularly concerned at the conditions in the Vilnius City Police Headquarters Arrest House, especially with regard to a number of cells with no access to natural light or ventilation that are also used for lengthy administrative detention (arts. 11, 13 and 16).

The State party should:

(a) Continue to take steps to improve conditions in police detention facilities with regard to material conditions, including infrastructure, hygiene, access to natural and artificial light, ventilation, the partitioning of sanitary facilities, and clean mattresses and bedding, as well as with regard to the regimen of outdoor activities, in accordance with the Standard Minimum Rules for the Treatment of Prisoners;

(b) Ensure that the renovation of existing police detention facilities and the building of new ones continues according to schedule, and ensure that police arrest houses are properly equipped to hold administrative detainees;

(c) Comply with the Programme for the Optimization of the Operations of Police Detention Facilities 2009–2015 and with the hygiene norms entitled "Police detention facilities: general health safety requirements".

Conditions of detention in prison facilities and inter-prisoner violence

(20) The Committee is concerned at the high number of prisoners in the penitentiary system, which results in serious overcrowding in some prison facilities and gives rise to

inter-prisoner violence, mostly a result of inadequate management and staffing. It is also concerned that the infrastructure and poor material conditions in a number of prisons, especially in the Lukiskes and Siauliai prisons, including living space per prisoner, are not in conformity with international standards and that prisoners are not provided with a constructive regime. The Committee is also concerned at allegations of excessive use of force by prison staff in certain facilities (arts. 2, 11, 12, 13 and 16).

The State party should:

(a) Enhance steps to improve the material conditions of detention in conformity with the appropriate provisions of the Standard Minimum Rules for the Treatment of Prisoners, which are currently under revision, particularly in the Lukiskes and Siauliai prisons, including by ensuring the best existing international standards of living space per prisoner, by renovating existing prison facilities, closing those unfit for use, notably the Lukiskes prison, and building new ones, and providing prisoners with constructive and purposeful activities, in accordance with the Plan of Implementing Measures 2009–2017 in relation to the Strategy for the Renovation of Places of Imprisonment;

(b) Enhance steps to reduce inter-prisoner violence by: improving prison management and the prisoner/staff ratio; strengthening the monitoring and management of vulnerable prisoners; and implementing the Programme for the Prevention of Manifestations of the Criminal Subculture in Places of Imprisonment, of 20 January 2009, and the Procedure for the Prevention and Investigation of Injuries of Detainees and Convicts in Places of Imprisonment, Order No. V-180 of 21 May 2012;

(c) Ensure that all reports of excessive use of force by prison staff are investigated promptly, effectively and impartially by an independent mechanism with no institutional or hierarchical connection between the investigators and the alleged perpetrators, and ensure that all persons under investigation for having committed acts of torture or ill-treatment are immediately suspended from their duties and remain so throughout the investigation, while ensuring that the principle of presumption of innocence is observed;

(d) Prosecute persons suspected of ill-treatment and, if found guilty, ensure that they are punished in accordance with the gravity of their acts;

(e) Ensure that the Seimas Ombudsman and other independent mechanisms regularly monitor and visit all places of detention;

(f) Establish a mechanism to deal with the complaints of inmates about their conditions of detention and provide effective follow-up to such complaints for the purpose of remedial action;

(g) Provide training to prison staff and medical personnel on communication with and the managing of inmates and on detecting signs of vulnerability;

(h) Resort more to alternatives to incarceration, taking into account the provisions of the Tokyo Rules.

Redress, including compensation and rehabilitation

(21) While noting the Law on Compensation of Damage Resulting from Unlawful Actions of Institutions of Public Authority and the Representation of the State, the Committee is concerned that there is no explicit provision in domestic legislation and no specific programmes of assistance and support that provide for the right of victims of

torture and ill-treatment to fair and adequate compensation, including the means for as full rehabilitation as possible, as required by article 14 of the Convention (art. 14).

The State party should amend its legislation to include explicit provisions on the right of victims of torture and ill-treatment to redress, including fair and adequate compensation and rehabilitation, in accordance with article 14 of the Convention. It should, in practice, provide all victims of torture or ill-treatment with redress, including fair and adequate compensation, and as full rehabilitation as possible, and should allocate the necessary resources for the effective implementation of rehabilitation programmes.

The Committee draws the attention of the State party to its general comment No. 3 (2012) on the implementation of article 14 by States parties, in which it clarifies the content and scope of the obligation of States parties to provide full redress to victims of torture.

Statements made as a result of torture

(22) The Committee is concerned at the methods of criminal investigation whereby confession is relied on as the primary and central element of proof in criminal prosecution. It is further concerned that the Code of Criminal Procedure provides for "procedural coercive measures" and that "physical force may be used only to the extent necessary to eliminate prevention of performance of a procedural step" (arts. 2, 15 and 16).

The State party should:

(a) Take the steps necessary to ensure in practice that confessions obtained as a result of torture and ill-treatment, in all cases and in line with domestic legislation and the provisions of article 15 of the Convention, are not admissible in court;

(b) Improve the methods of criminal investigation to end practices whereby confession is relied on as the primary and central element of proof in criminal prosecution, in some cases in the absence of any other evidence;

(c) Submit information on the application of the provisions prohibiting the admissibility of evidence obtained under duress and on whether any officials have been prosecuted and punished for extracting such confessions.

Involuntary hospitalization and involuntary medical treatment

(23) While taking note that a working group is in the process of drafting amendments to the Law on Mental Health Care, the Committee is concerned at the absence of legal safeguards concerning involuntary civil hospitalization and involuntary medical treatment of persons with mental and psychosocial disabilities in psychiatric institutions. It is also concerned that courts have only 48 hours to reach decisions on hospitalization (arts. 2, 11 and 16).

The State party should:

(a) Ensure that the amended Law on Mental Health Care provides guarantees for effective legal safeguards for all persons with mental and psychosocial disabilities concerning civil involuntary hospitalization as well as concerning involuntary psychiatric and medical treatment in psychiatric institutions;

(b) Review the legal status of patients and ensure that patients' consent is requested both with regard to hospitalization and in relation to psychiatric medical treatment, and that they are allowed to avail themselves of the right to appeal against the decision;

(c) Ensure the patient's right to be heard in person by the judge ordering the hospitalization and that the court always seeks the opinion of a psychiatrist who is not attached to the psychiatric institution admitting the patient;

(d) Ensure regular visits of psychiatric institutions by a mandated outside body independent of the health authorities;

(e) Establish an independent complaints mechanism; publish a brochure with its procedures and ensure its distribution to patients and families; and investigate effectively, promptly and impartially all complaints of ill-treatment of persons with mental and psychosocial disabilities hospitalized in psychiatric institutions, bring those responsible to justice and provide redress to victims.

Corporal punishment of children

(24) The Committee is concerned that corporal punishment of children in the home and in alternative and day-care settings is not prohibited in national law (arts. 2 and 16).

The State party should amend its national legislation to prohibit and criminalize all forms of corporal punishment of children in all environments and settings, in accordance with international standards, conduct public awareness-raising campaigns about its harmful effects and promote positive non-violent forms of discipline as an alternative to corporal punishment.

Hazing and ill-treatment in the army

(25) The Committee is concerned at reports of hazing in the army. It takes note of the State party's confirmation that conscription has been abolished (arts. 2 and 16).

The State party should:

(a) Reinforce measures to prohibit and eliminate ill-treatment in the armed forces and ensure prompt, impartial and thorough investigation of all allegations of such acts;

(b) Provide the Committee with information on the follow-up to any confirmed cases of hazing in the army;

(c) Establish, where evidence of hazing is found, the liability of direct perpetrators and those in the chain of command, prosecute and punish those responsible with penalties that are consistent with the gravity of the act committed, and make the results of such investigations public;

(d) Provide redress and rehabilitation to victims, including through appropriate medical and psychological assistance, in accordance with general comment No. 3.

Other issues

(26) The Committee reiterates its recommendation that the State party consider making the declarations under articles 21 and 22 of the Convention.

(27) The Committee invites the State party to consider ratifying the United Nations human rights treaties to which it is not yet party, namely, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

(28) The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations in appropriate languages, including Russian, through official websites, the media and non-governmental organizations.

(29) The Committee requests the State party to provide, by 23 May 2015, follow-up information in response to the Committee's recommendations relating to: (a) strengthening legal safeguards for persons deprived of their liberty; (b) pretrial and administrative detention; and (c) conditions of detention in police arrest houses, as contained in paragraphs 10, 11 and 19, respectively, of the present document.

(30) The State party is invited to submit its next report, which will be the fourth periodic report, by 23 May 2018. For that purpose, the Committee will, in due course, submit to the State party a list of issues prior to reporting, considering that the State party has accepted to report to the Committee under the optional reporting procedure.

67. Montenegro

(1) The Committee against Torture considered the second periodic report of Montenegro (CAT/C/MNE/2) at its 1224th and 1227th meetings, held on 7 and 8 May 2014 (see CAT/C/SR.1224 and 1227), and adopted the following concluding observations at its 1239th meeting, held on 16 May 2014 (see CAT/C/SR.1239).

A. Introduction

(2) The Committee expresses its appreciation to the State party for accepting the optional reporting procedure and for having submitted its second periodic report thereunder without delay, as it improves the cooperation between the State party and the Committee and focuses on the examination of the report as well as the dialogue with the delegation. The Committee also welcomes the submission of the common core document (HRI/CORE/MNE/2012).

(3) The Committee welcomes the constructive dialogue held with the State party's high-level and multisectoral delegation, as well as the additional information and explanations provided by the delegation to the Committee.

B. Positive aspects

(4) The Committee welcomes the State party's ratification of the following international and regional instruments:

(a) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2009;

(b) Convention on the Rights of Persons with Disabilities, and its Optional Protocol, in 2009;

(c) International Convention for the Protection of All Persons from Enforced Disappearance, in 2011;

(d) Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, in 2013;

(e) Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, in 2013.

(5) The Committee welcomes the legislative measures taken by the State party in areas of relevance to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, including the adoption of the:

(a) Law on Domestic Violence Protection, in 2010;

(b) Law on Amendments to the Law on Minority Rights and Freedoms, in 2010;

(c) Law on the Treatment of Juveniles in Criminal Proceedings, in 2011.

C. Principal subjects of concern and recommendations

Definition and criminalization of torture

(6) While noting the efforts undertaken by the State party to bring its legislation in the area of torture prevention into compliance with the Convention and international standards, the Committee remains concerned that legislation is not yet fully harmonized with the Convention, in view of the limited scope of the definition of torture and lenient penalties for the crime of torture under article 167 of the Criminal Code, amended in 2010. The Criminal Code does not fully reflect all elements of the definition in article 1 of the Convention, which includes pain or suffering inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity (arts. 1 and 4).

The State party should revise the legislation:

(a) To adopt a definition of torture that covers all the elements contained in article 1 of the Convention;

(b) To ensure that penalties for torture are commensurate with the gravity of this crime, as required under article 4, paragraph 2, of the Convention;

(c) To ensure that the absolute prohibition on torture is non-derogable and that acts amounting to torture are not subject to any statute of limitations.

Fundamental legal safeguards

(7) The Committee is concerned that, in practice, persons deprived of their liberty are not always afforded all fundamental legal safeguards from the very outset of their deprivation of liberty, including the right to have access to an independent lawyer and an independent doctor of their choice, and to contact a relative. The Committee expresses its concern at the requirement for an order by the public prosecutor prior to medical examinations of arrested and detained persons being carried out, under article 268 of the Criminal Procedure Code (art. 2).

In the light of the Committee's general comment No. 2 on the implementation of article 2 by States parties, the State party should take all necessary measures to ensure that all persons deprived of their liberty are afforded, in law and in practice, fundamental legal safeguards from the very outset of deprivation of liberty, including the right of access to an independent lawyer and to an independent doctor, preferably of their own choice, without conditioning such access on the permission or request of officials, and the right to contact a relative.

Legal aid

(8) While welcoming the adoption in 2011 of the Law on Legal Aid, the Committee is concerned at reports that its implementation continues to be hampered and that marginalized groups, including asylum seekers and displaced persons, are often left without access to legal procedures and protection of their rights (arts. 3, 11 and 16), in view of:

(a) The lack of human and financial resources and of public awareness about the Law;

(b) The limited coverage of the Law, which only extends to judicial and not administrative proceedings.

The State party should continue to intensify its efforts to provide an effective free legal aid system and to ensure appropriate protection and access to the legal system for vulnerable persons and groups, in particular by providing adequate resources for

effective implementation of the Law on Legal Aid and by extending the application of free legal assistance so that it includes administrative proceedings.

National institutions

(9) While noting that the Protector of Human Rights and Freedoms of Montenegro was designated as the national preventive mechanism following the ratification by Montenegro of the Optional Protocol to the Convention against Torture, the Committee is concerned at the lack of information about the legal framework and the lack of resources and staff for it to effectively discharge its duties. The Committee is also concerned at the lack of full independence of this institution and at the inadequate human and financial resources allocated to it (arts. 2 and 11).

The State party should take measures to further strengthen the institution of the Protector of Human Rights and Freedoms in accordance with the Paris Principles (General Assembly resolution 48/134, annex) and to ensure the provision of sufficient financial and human resources to enable it to carry out its mandate independently and effectively, particularly in view of its expanded mandates and powers as the national preventive mechanism.

Independence of the judiciary

(10) While noting the ongoing amendments to the Law on Courts and the Law on the Judicial Council, the Committee remains concerned at the lack of independence of the judiciary in practice, mainly due to the lack of objective and precise evaluation criteria for the appointment, promotion or dismissal of judges (arts. 2 and 12).

The State party should continue to take measures to ensure the full independence and impartiality of the judiciary in performing its functions, and should review the regime for the appointment, promotion and dismissal of judges, in line with the Basic Principles on the Independence of the Judiciary (General Assembly resolution 40/146) and the Bangalore Principles of Judicial Conduct (2002).

Asylum seekers

(11) While noting the opening in 2014 of the first centre in the State party for asylum seekers, the Committee regrets that the centre is not fully operational and that many asylum seekers are still accommodated in ad hoc reception centres that do not meet international standards. The Committee is also concerned at the lack of clarity of the Law on Asylum with regard to the competences of the various governmental entities involved in the asylum system, as well as at the poor conditions for asylum seekers (art. 3).

The State party should provide the centre for asylum seekers with the necessary resources. The State party should also amend the Law on Asylum and revise the national asylum system in order to offer more effective protection against refoulement.

Displaced persons

(12) While welcoming the State party's accession in 2013 to the Convention on the Reduction of Statelessness, as well as its adoption of the Law on Amendments to the Law on Foreigners, the Committee remains concerned at reports that the Montenegrin authorities continue to pursue repatriation, voluntary return, or resettlement in a third country as the main solutions for displaced persons, rather than integration in Montenegro (art. 3). The Committee is particularly concerned at:

(a) The legal status of "displaced" persons and "internally displaced" persons, the persistent obstacles to their obtaining permanent resident status, and the fact that they may be subject to refoulement if they fail to regularize their legal status;

(b) The obstacles to birth registration, including high administrative fees and complex procedures, in particular for Roma, Ashkali and Egyptians, which put them at risk of statelessness.

In light of the recommendations made by the Committee (CAT/C/MNE/CO/1, para. 11), the State party should take measures to:

(a) Simplify the procedure for regularizing the legal status of "displaced" and "internally displaced" persons, and protect their legal rights. They should be protected from refoulement or mistreatment;

(b) Establish a simplified and accessible procedure for birth registration, thereby reducing the number of persons at risk of statelessness.

Impunity for war crimes and remedy for victims

(13) The Committee is deeply concerned at the impunity enjoyed by perpetrators of crimes under international law, in view of the absence of final convictions in proceedings in domestic courts. Regarding the four war crimes cases, namely Kaluderski Laz, Morinj, Deportation of Muslims, and Bukovica, there is a concern that the court failed to fully apply domestic criminal law and to comply with relevant international legal standards. The Committee expresses its concern that the majority of victims of violations of war crimes in Montenegro have yet to be afforded the right to reparation (arts. 12, 14 and 16).

The State party should intensify its efforts to fight impunity for war crimes by:

(a) Ensuring that relevant domestic criminal law is fully applied and that decisions by the domestic courts on war crimes cases are in line with international humanitarian law, including the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia;

(b) Completing its investigation of all allegations of wartime crimes, and prosecuting the perpetrators and punishing them with appropriate penalties commensurate with the grave nature of the crimes;

(c) Ensuring access to justice and reparations for victims, in the light of the Committee's general comment No. 3 on the implementation of article 14 by States parties.

Investigations

(14) The Committee takes note of the work of the Division for Internal Control of the Police, under the Ministry of the Interior, as well as of article 11 of the Criminal Procedure Code which prohibits the threatening or the exerting of violence against a suspect or accused person in order to extract a confession. However, the Committee remains concerned at consistent reports about (a) physical ill-treatment of detainees and the exertion of pressure on them by the police at the time of questioning with a view to extracting confessions or obtaining information and (b) the State party's failure to investigate allegations of torture, ill-treatment or excessive use of force by the police and to prosecute and punish perpetrators (art. 12).

The State party should:

(a) Improve criminal investigation methods so as to put an end to practices whereby confession is relied on as the primary and central element of proof in criminal prosecution;

(b) Ensure prompt, impartial and effective investigation into all allegations of torture, ill-treatment and excessive use of force by the police, and prosecute and punish those responsible with appropriate penalties. Such investigations should not be

conducted by the police or under the authority of the police but by an independent body;

(c) Ensure that persons under investigation acts of torture or ill-treatment are immediately suspended from their duties and remain so throughout the investigation.

Individual complaints

(15) The Committee is concerned at the lack of effective measures by the State party to ensure an effective complaints procedure for victims of torture or ill-treatment and to provide protection for victims and witnesses from ill-treatment or intimidation as a consequence of filing a complaint or providing evidence (arts. 13 and 16).

The State party should establish and promote an effective mechanism for receiving complaints of torture and ill-treatment, including in custodial facilities. The State party should guarantee full protection for complainants and witnesses in cases of torture and ill-treatment.

Training

(16) While noting the detailed information provided by the State party on training programmes for law enforcement officials, prison staff and judges, the Committee regrets the paucity of information on (a) specific training regarding the provisions of the Convention and (b) monitoring and evaluation of the effectiveness of the training programmes in reducing the incidence of torture and ill-treatment (arts. 10 and 16).

The State party should continue to intensify its efforts to provide human rights training programmes for all officials involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment, with a focus on the State party's obligations under the Convention. In particular, the State party should:

(a) Ensure that all relevant personnel, including medical personnel, receive specific training on how to identify signs of torture and ill-treatment. To this end, the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) should be included in the training material;

(b) Assess and evaluate, as far as practicable, the effectiveness of educational and training programmes relating to the Convention and the Istanbul Protocol.

Conditions of detention

(17) While noting the State party's commitment to improving conditions of detention, through a European Union project, the Committee remains concerned at the conditions in detention facilities, especially the remand prison in Podgorica, such as the overcrowding, the inadequate access to health care and the lack of meaningful activities and rehabilitation programmes. The Committee regrets the lack of information on inter-prisoner violence and sexual violence in prisons (arts. 11 and 16).

The State party should strengthen its efforts to improve prison conditions in conformity with the Standard Minimum Rules for the Treatment of Prisoners (Economic and Social Council resolutions 663 C (XXIV) and 2076 (LXII)), by reducing the high rate of overcrowding, in particular through the wider use of alternatives to imprisonment, in the light of the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), by providing access to full health care services for prisoners. The State party should implement effectively alternative sanctions and rehabilitation programmes. The Committee also recommends that the

State party take appropriate measures to prevent sexual violence in prisons, including inter-prisoner violence.

Attacks against journalists

(18) The Committee is concerned at a number of cases of intimidation of or violence against journalists, killings of journalists and attacks against media property, and at the lack of investigation of such cases. In addition to the cases of Olivera Lakić and Mladen Stojović, the Committee takes note of concerns raised by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression at the end of his visit to Montenegro in 2013 in relation to unresolved cases of attacks on and killings of journalists, including the murder of Duško Jovanović in 2004 (arts. 2 and 12).

The State party should inform the Committee of the outcomes of the work carried out by the commission established in December 2013 to investigate cases of threats and violations against journalists, murders of journalists and attacks on media property.

Violence against women

(19) While noting the State party's efforts to combat gender-based violence, including the adoption of the Law on Domestic Violence Protection in 2010, and of the Strategy for Combating Domestic Violence for the period 2011–2015, the Committee expresses its concern at (art. 16):

(a) The reported lack of implementation of existing legislation and policy;

(b) The prevalence of violence against women and, in particular, of domestic violence, as well as the low rate of reporting on such violence;

(c) The lack of effective investigation of reports of violence and the lack of prosecutions, the mild sentences given to perpetrators and the inadequate protection of victims, with protection orders being used in only a limited manner.

Recalling the recommendations made in 2011 by the Committee on the Elimination of Discrimination against Women (CEDAW/C/MNE/CO/1, para. 19), the State party should increase its efforts to prevent, combat and punish violence against women and domestic violence, in particular by conducting impartial, prompt and effective investigations into reports of violence, punishing perpetrators with appropriate penalties, providing adequate protection to those at risk of violence and assistance to victims, and establishing support services for victims. The State party is encouraged to conduct broader awareness-raising campaigns and training on domestic violence for law enforcement personnel, judges, lawyers and social workers who are in direct contact with victims, as well as for the public at large.

Trafficking in persons

(20) The Committee notes the significant efforts undertaken by the State party to combat trafficking in persons, including the adoption of the 2010 amendment to article 444 of the Criminal Code specifically criminalizing trafficking, as well as the strategy to combat trafficking for the period 2012–2018. However, the Committee remains concerned at the very limited number of complaints, prosecutions and convictions in respect of perpetrators of trafficking, as well as at the lack of protection and remedy provided for victims (CAT/C/MNE/2, annex II) (arts. 2, 10 and 16).

The State party should undertake effective measures to prevent and combat trafficking in persons, by implementing in practice article 444 of the Criminal Code, prosecuting perpetrators, providing protection and compensation to victims, and intensifying training for judges, prosecutors, and migration and other law

enforcement officials. The State party also should strengthen regional cooperation with a view to combating trafficking.

Corporal punishment

(21) While welcoming the commitment made by the State party during the universal periodic review to explicitly prohibit corporal punishment of children in all settings (A/HRC/23/12/Add.1, para. 21), the Committee notes that corporal punishment of children is not explicitly prohibited in the home or in alternative care settings and that corporal punishment is still widely practised in society and accepted as a form of discipline in Montenegro (art. 16).

The State party should adopt and implement legislation explicitly prohibiting corporal punishment in all settings, supported by the necessary awareness-raising and educational campaigns about the negative impact of corporal punishment on children.

Vulnerable groups

(22) While noting the efforts made by the State party, including the adoption of the Law on Prohibition of Discrimination in 2010, and of the Law on Amending the Criminal Code in 2013 which prohibits hate crimes, the Committee remains concerned at discriminatory treatment against ethnic minorities, in particular people of Roma, Ashkali and Egyptian origin, as well as at their deplorable living conditions resulting from such treatment (art. 16).

The State party should redouble efforts to protect ethnic minorities, in particular people of Roma, Ashkali and Egyptian origin, from discriminatory treatment, including through increased awareness-raising and information campaigns to promote tolerance and respect for diversity.

(23) While noting the adoption of the Strategy for the Advancement of Quality of Life for Lesbian, Gay, Bisexual and Transgender (LGBT) Persons 2013–2018, and of the Law on Prohibition of Discrimination, which provides for protection against discrimination on the grounds of gender identity and sexual orientation, the Committee remains concerned at continuing reports of violence and discrimination against the LGBT community, as shown by the allegations of death threats against LGBT activist Zdravko Cimbaljević (arts. 2 and 16).

The State party should take effective measures to protect the LGBT community from attacks and abuse, inter alia, by ensuring that all acts of violence are promptly, effectively and impartially investigated and prosecuted, that perpetrators are brought to justice and that victims are provided with redress.

Data collection

(24) The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions regarding cases of torture and ill-treatment by law enforcement and prison personnel, on inter-prisoner violence, as well as on gender-based violence, domestic violence and trafficking.

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions regarding the above-mentioned cases of torture and ill-treatment, on inter-prisoner violence, and on gender-based violence, domestic violence and trafficking, as well as on the means of redress, including compensation and rehabilitation, provided to the victims. Such data should be submitted to the Committee when compiled.

Other issues

(25) The Committee recommends that the State party strengthen its cooperation with United Nations human rights mechanisms, and its efforts for the implementation of their recommendations. The State party should take further steps to ensure a well-coordinated, transparent and publicly accessible approach to overseeing implementation of its obligations under the United Nations human rights mechanisms, including the Convention.

(26) The Committee invites the State party to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

(27) The State party is encouraged to disseminate widely the report that it submitted to the Committee, its replies to the list of issues, the summary records of meetings, and the conclusions and recommendations of the Committee, in all appropriate languages, through official websites, the media and non-governmental organizations.

(28) The Committee requests the State party to provide, by 23 May 2015, follow-up information in response to the Committee's recommendations relating to (a) ensuring or strengthening legal safeguards for detained persons; (b) conducting prompt, impartial and effective investigations and (c) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, in accordance with paragraphs 7, 13 and 14 of the present concluding observations.

(29) The State party is invited to submit its next report, which will be the third periodic report, by 23 May 2018. To that end, the Committee will, in due course, submit to the State party a list of issues prior to reporting, in view of the fact that the State party has accepted to report to the Committee under the optional reporting procedure.

68. Sierra Leone

(1) The Committee against Torture considered the initial report of Sierra Leone (CAT/C/SLE/1) at its 1219th and 1221st meetings, held on 2 and 5 May 2014 (see CAT/C/SR.1219 and 1221), and adopted the following concluding observations at its 1237th meeting, held on 15 May 2014 (see CAT/C/SR.1237), and its 1238th meeting, held on 16 May 2014 (CAT/C/SR.1238).

A. Introduction

(2) The Committee welcomes the initial report of Sierra Leone (CAT/C/SLE/1). However, the Committee regrets that the report does not fully conform to the Committee's guidelines on the form and content of initial reports (CAT/C/4/Rev.3), and that it was submitted with an 11-year delay, which prevented the Committee from conducting an analysis of the implementation of the Convention in the State party following its accession in 2001.

(3) The Committee is grateful to the State party for the constructive and frank dialogue held with its high-level delegation and the additional information that was provided during the consideration of the report.

B. Positive aspects

(4) The Committee welcomes the State party's ratification of the following international instruments:

(a) The Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict, on 17 September 2001 and 15 May 2002 respectively;

(b) The Convention on the Rights of Persons with Disabilities, on 4 October 2010.

(5) The Committee welcomes the following legislative measures taken by the State party in areas of relevance to the Convention:

(a) The Sexual Offences Act, 2012, which increases penalties for sexual offences and prohibits spousal rape;

(b) The Legal Aid Act, 2012;

(c) The Domestic Violence Act, 2007;

(d) The Refugees Protection Act, 2007.

(6) The Committee further welcomes:

(a) The establishment in 2004 of the interministerial Trafficking in Persons Task Force, with representation from civil society organizations, and the Office of National Security, to coordinate the monitoring of human trafficking;

(b) The establishment, in 2003, of the family support units within police stations and the adoption in 2012 of the National Referral Protocol on gender-based violence and the National Plan of Action on gender-based violence;

(c) The establishment of the National Human Rights Commission by an Act of Parliament in 2004, becoming operational in 2007.

C. Principal subjects of concern and recommendations

Application of the Convention in the State party

(7) While taking note of the fact that Sierra Leone has a dualist legal system, as regards the incorporation of international treaties into domestic law, the Committee is concerned that, 13 years after acceding to the Convention, the State Party has still not incorporated the Convention into the national legal system (art. 2).

The Committee urges the State party to enact legislation to give effect in the domestic legal system to the rights and obligations it has undertaken under the Convention. The State party is encouraged to take into account the following aspects when enacting the legislation.

Criminalization and definition of torture

(8) In spite of the prohibition of torture laid down in section 20, paragraph 1, of the Constitution, the Committee is concerned that the State party has not yet incorporated the crime of torture into its criminal legislation. The Committee also takes note of the prohibition of torture against children in section 33 of the Child Rights Act, 2007, but is concerned at the fact that torture against children is not defined in the Act and carries very low penalties, such as a fine or a term of imprisonment not exceeding two years. The Committee further notes the statement of the delegation that acts of torture are currently punished under other types of offences, contained in the Offences against the Person Act, 1861. The Committee is therefore seriously concerned at the existence of legal loopholes that allow a situation of impunity for acts of torture and at their prevalence (arts. 1 and 4).

The Committee urges the State party to specifically criminalize all acts of torture in its criminal legislation and incorporate the definition of torture as contained in article 1 of the Convention in its criminal law, as undertaken by the State delegation during the dialogue with the Committee. The State party should ensure that such offences are punishable by appropriate penalties commensurate with their grave nature, in accordance with article 4, paragraph 2, of the Convention. The State party should also make the necessary legislative amendments to ensure that sections 33 and 35 of the Child Rights Act are aligned with this recommendation.

Amnesties and non-derogability of the prohibition of torture

(9) The Committee is concerned at the State party's statement in the State report that acts of torture were committed from 1992 to 1998 during the military regimes (CAT/C/SLE/1, para. 42), and by the fact that the Lomé Peace Agreement (Ratification) Act of 1999 provides amnesty to all combatants for any actions carried out in pursuit of their objectives during this period. While acknowledging that a number of persons have been tried and convicted by the Special Court for Sierra Leone, the Committee notes that this international criminal court only has the competence to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996 (arts. 2, 12, 13 and 14).

In the light of its general comments No. 2 (2008) on the implementation of article 2 by States parties and No. 3 (2012) on the implementation of article 14 by States parties, the Committee reiterates to the State party the long-established *jus cogens* prohibition of torture, according to which the prosecution of acts of torture should not be subjected to any condition of legality or statute of limitation. The Committee considers that amnesty provisions that preclude prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability of the prohibition of torture and contribute to a climate of impunity. In view of this, the Committee urges the State party to repeal the amnesty provisions in the Lomé Peace Agreement (Ratification) Act of 1999 and to take all the necessary steps to ensure: (i) that cases of torture and other cruel, inhuman or degrading treatment or punishment be thoroughly and promptly investigated in an impartial manner; (ii) that the perpetrators be subsequently tried and punished; and (iii) that steps be taken to provide reparation to the victims.

Absolute prohibition of torture

(10) The Committee notes with concern that section 20 of the Constitution does not absolutely prohibit torture under any and all circumstances, since paragraph 2 of the same section authorizes the infliction of any kind of punishment that was lawful before the entry into force of the Constitution. Neither does section 29 of the Constitution, regulating a state of public emergency, explicitly indicate either that the prohibition of torture is non-derogable (art. 2).

The State party should repeal paragraph 2 of section 20, and make the necessary amendments to section 29, of the Constitution during its current Constitutional review process to legislate for the absolute prohibition of torture, explicitly providing that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. The State party should also explicitly indicate in its national legislation that the statute of limitations shall not apply for the offence of torture.

Fundamental legal safeguards

(11) While noting that section 17, paragraph 2, of the Constitution provides that detainees have the right to access a lawyer from the outset of their deprivation of liberty, the Committee is concerned that this safeguard cannot be effectively implemented, since most detainees cannot afford a lawyer, and the National Legal Aid Board created in the Legal Aid Act, 2012 is yet to commence its work. The Committee is further concerned that, under section 17, paragraph 3, of the Constitution, detainees can be held for as long as 10 days in police custody before being brought before a judge in the case of a capital offence, and are reportedly held for longer periods than those prescribed in the Constitution. Moreover, detainees do not have a legal right to an independent medical examination as soon as they are admitted to a place of detention, nor, in the case of foreigners, to communicate with the

consular authorities. The Committee is further concerned at the fact that the registration of detainees is not regulated and registers are poorly kept (art. 2).

The State party should:

(a) Ensure that detainees enjoy, de jure and de facto, all legal safeguards from the moment when they are deprived of their liberty, particularly the rights to be examined by an independent doctor; to notify a relative and, in the case of foreigners, consular authorities; to be brought promptly before a judge; and to have prompt access to a lawyer and, if necessary, to legal aid;

(b) Take effective steps without delay to ensure that the National Legal Aid Board, created in the Legal Aid Act, 2012, commences its work as soon as possible and, with the Sierra Leone Bar Association, is provided with sufficient resources to provide legal aid to all persons in need;

(c) Adopt effective legislative, administrative, judicial and other measures to regulate the registration of all detainees in the country, which should indicate the type of detention, the crime and period of detention or imprisonment, the date and time of deprivation of liberty and of being taken into detention, the place where they are being held, and their age and sex;

(d) Make the necessary amendments to its laws to abolish the provision under which people may be held in police custody for a 10-day period or 72 hours, depending on the offence, and introduce in its place a maximum 48-hour period.

Death penalty

(12) While welcoming the official moratorium on executions since 2011 and the current efforts of the State party to do away with the death penalty, the Committee remains concerned that the death penalty has not yet been officially abolished (arts. 2 and 16).

The Committee encourages the State party to accelerate its current legislative review and to abolish the death penalty, in line with the commitment made during the dialogue with the Committee.

Excessive use of force, including lethal force

(13) The Committee is highly concerned about allegations of excessive use of force, including lethal force, by police and security forces, especially when apprehending suspects and quelling demonstrations, and about the broad threshold for the use of lethal force in section 16, paragraph 2, of the Constitution. In particular, the Committee is concerned that the alleged excessive use of force by the police in Bumbuna, Tonkolili, in April 2012 led only to a confidential Coroner's inquest (arts. 2, 12 and 16).

The State party should take immediate and effective action to investigate promptly, effectively and impartially all allegations of excessive use of force, especially lethal force, by members of law enforcement agencies and to bring those responsible for such acts to justice and provide the victims with redress. The State party should also ensure that confidential Coroner's inquests are complementary and not a substitute for criminal prosecutions and court proceedings.

The Committee urges the State party to make the necessary amendments in section 16 of the Constitution and the police rules of procedure to ensure that lethal use of firearms by law enforcement officials can only be employed as a measure of last resort and if strictly unavoidable for the purpose of protecting life, in accordance with the Convention, the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990). The State party should provide regular training to law enforcement personnel in

order to ensure that officials comply with the above rules and are aware of the liabilities they incur if they make unnecessary or excessive use of force.

Sexual and gender-based violence, including domestic violence

(14) While welcoming the measures taken to combat gender-based and domestic violence (see paras. 5 (a) and (c) and 6 (b) above), the Committee remains concerned at the high prevalence of gender-based violence in the country, including rape of girls by close relatives and teachers. The Committee also notes with concern the prevalent underreporting, partly due to the pressure on victims to resort to out-of-court settlements. Investigations are also ineffective, as acknowledged by the State party, due to "the inadequate capacity of the family support units to respond to gender-based violence cases, pressure by family members of the victims to drop charges, obstruction of justice by influential people including traditional leaders and politicians, and by the long delay in court trials" (HRI/CORE/SLE/2012, para. 149) (arts. 2, 12 and 16).

The State party should strengthen its efforts to eradicate sexual and gender-based violence, including domestic violence, in particular by:

(a) Providing the necessary resources to the family support units, and extending their presence in all police stations, particularly at chiefdom level;

(b) Ensuring that all cases of violence against women and children, including sexual and domestic violence, are expeditiously and thoroughly investigated, the perpetrators prosecuted and, if convicted, punished with appropriate sanctions;

(c) Guaranteeing victims full access to health services, including to free medical reports, family planning and to the prevention and diagnosis of sexually transmitted diseases, and ensuring that victims obtain shelter and redress, including fair and adequate compensation and the fullest possible rehabilitation;

(d) Training, inter alia, judges, prosecutors, police officers, forensic services and health-care providers on the strict application of the legislative framework with a gender-sensitive approach;

(e) Extending awareness-raising campaigns on gender-based violence, particularly to schools and the community at large.

Female genital mutilation

(15) The Committee takes note of the efforts made by the State party to combat female genital mutilation, but it remains deeply concerned at the fact that this practice is not penalized and, in fact, is highly prevalent in the State party. While taking note that section 33 of the Child Rights Act 2007 prohibits "any cultural practice which dehumanises or is injurious to the physical and mental welfare of a child", the Committee takes into account the State party's core document, in which it indicated that the Act "does not address the pervasive practice of female genital mutilation" (HRI/CORE/SLE/2012, para. 147) (arts. 2, 12, 13, 14 and 16).

In line with the commitment it made during the universal periodic review in May 2011 and in line with the State's obligations under the Convention, the State party should urgently: criminalize female genital mutilation, immediately adopt measures to eradicate this practice, and conduct enhanced and robust awareness-raising campaigns, particularly among families and traditional leaders, on the harmful effects of this practice.

Harmful traditional practices

(16) The Committee is concerned that section 2, paragraph 2, of the Registration of Customary Marriage and Divorce Act, 2007 still allows child marriage, subject to parental

consent, and notes the persistence of this and other harmful traditional practices, such as the verbal and physical violence, including lynching, inflicted on elderly women in relation to allegations of witchcraft. The Committee is also highly concerned about reports of the commission of ritual crimes and about the lack of effective investigations and successful prosecutions, the alleged interference of traditional leaders and the reliance on out-of-court settlements. Furthermore, the Committee regrets the lack of sufficient information on the steps taken to ensure that customary law conforms to the State party's obligations under the Convention (arts. 2 and 16).

The State party should:

(a) Repeal the provisions in the legislation that permit child marriage and establish the minimum marriageable age at 18 years;

(b) Strengthen its efforts to prevent and combat harmful traditional practices, particularly in rural areas, and ensure that such acts are investigated and the alleged perpetrators prosecuted and, if convicted, punished with appropriate sanctions;

(c) Create the conditions for victims to report without fear of reprisals and provide them with reparations;

(d) Increase awareness-raising measures to alert the public to the harmful effects of certain customs that are detrimental to women and other persons, as undertaken by the State delegation during the dialogue;

(e) Provide judges, prosecutors, law enforcement officials and traditional authorities with training on the strict application of the relevant legislation criminalizing harmful traditional practices and other forms of violence.

In general, the State party should ensure that its customary law and practices are compatible with its human rights obligations, particularly those under the Convention.

Abortion

(17) While acknowledging the steps taken by the State party to review the current restrictive legislation, the Committee is concerned that sections 58 and 59 of the Offences against the Person Act still criminalize abortion in all circumstances. These restrictions result in a large number of women seeking clandestine and unsafe abortions, which may account for over 10 per cent of maternal deaths (arts. 2 and 16).

The Committee recommends that the State party accelerate the review process of the Offences against the Person Act with a view to considering providing for further exceptions to the general prohibition of abortion, in particular for cases of therapeutic abortion and pregnancy resulting from rape or incest. The State party should, in accordance with the guidelines issued by the World Health Organization, guarantee immediate and unconditional treatment for women seeking emergency medical care as a consequence of unsafe abortion. The State party should also provide sexual and reproductive health services to women and adolescents, in order to prevent unwanted pregnancies.

Administration of justice

(18) The Committee is concerned at the small number of judges and prosecutors in the State party, which generates serious delays in trials and limits access to justice to victims of torture or ill-treatment. The Committee is also highly disturbed by the manner in which the detention system of the State party has allegedly become vulnerable to corrupt practices in that bail is usually granted upon payment of "speed money" to the police and the judiciary,

particularly in the local courts. The Committee also notes the absence of safeguards for the protection of the independence of the judiciary, all of which may hamper the effective administration of justice as a means of combating torture (art. 2).

The State party should:

(a) Pursue the reform of the judicial system that it has initiated and take appropriate measures to increase the number and quality of the available judicial and prosecutorial capacity;

(b) Reinforce the measures in place for countering police and judicial misconduct, particularly corrupt practices in all their forms, which may hinder the progress of investigations and the proper functioning of an independent, impartial and appropriate legal and judicial system;

(c) Carry out investigations, bring perpetrators to justice and, in the case of convictions, impose adequate penalties;

(d) Guarantee and protect the independence of the judiciary, ensure their security of tenure, improve the legislation governing their conduct, and provide judges with continuous professional development training, including in judicial conduct and the Convention, in line with the Basic Principles on the Independence of the Judiciary (see General Assembly resolutions 40/32 and 40/146).

Superior orders and command responsibility

(19) While taking note of the statement in the State report that the rules governing public officials do not preclude officers from liability for torture if they invoke superior orders as a defence (CAT/C/SLE/1, para. 41), the Committee remains concerned at the lack of clarity regarding the existence of mechanisms that offer subordinates who refuse to obey such an order protection against retaliation by superior officers. The Committee is also concerned at the lack of information on whether or not the principle of command or superior responsibility for acts of torture committed by subordinates is recognized in domestic laws (arts. 1 and 2).

In the light of the Committee's general comment No. 2, the State party should establish, both in law and in practice:

(a) The right of all law enforcement officials to refuse, as subordinates, to execute an order from their superior officers that would result in contravention of the Convention;

(b) Mechanisms to protect subordinates from reprisals if they refuse to carry out an order from a superior that is in breach of the Convention;

(c) The criminal responsibility of those exercising superior authority for acts of torture or ill-treatment committed by subordinates where they knew or should have known that such impermissible conduct was, or was likely, to occur, yet took no reasonable and necessary preventive measures.

Non-refoulement

(20) While welcoming the fact that the Refugees Protection Act 2007 bars the "refoulement" of refugees and their families if there are substantial grounds for believing that they would be in danger of being subjected to torture, the Committee notes with concern that the Extradition Act 1974 does not explicitly recognize this principle. Although the decision to extradite is subject to judicial review, there is no legal obligation to assess the situation of the applicant with regard to the risk of torture in the country of destination. The Committee is also concerned at the lack of sufficient financial support provided to the

three refugee bodies set out under the Refugees Protection Act, which inhibits them from performing their functions effectively (art. 3).

The State party should abide by its obligations under the Convention, repeated in the commitment made during the dialogue with the Committee, and amend the Extradition Act to ensure that it conforms to the non-refoulement obligation under article 3 of the Convention. The State party should also take the necessary steps to guarantee that the principle of non-refoulement is properly applied by the High Court and the Supreme Court when they decide on extradition cases. The State party should further allocate sufficient funding to its national refugees structures to ensure their sustainability, as recommended previously by the Human Rights Committee.

Jurisdiction over acts of torture

(21) The Committee is concerned at the lack of clarity concerning the possibility of establishing extraterritorial jurisdiction over the crime of torture when the alleged victim is a national of Sierra Leone, or the alleged foreign offender is present under its jurisdiction. The Committee also notes the lack of clarity regarding the existence of the necessary legislative measures establishing the State party's obligation to extradite or prosecute for acts of torture (*aut dedere, aut judicare*). The Committee further notes with concern that, according to section 42, paragraph 1, of the Criminal Procedure Acts, 1965, national courts may establish jurisdiction over crimes committed by nationals of Sierra Leone abroad only when these crimes were committed by a public official acting "in the course of his duties" (arts. 5, 6 and 7).

The State party should ensure that the new Criminal Procedure Act, 2014 establishes extra-territorial jurisdiction over acts of torture when the alleged victim is a national of Sierra Leone or the alleged offender is present in Sierra Leone, either to extradite the alleged perpetrator to a State with jurisdiction over the offence or to an international criminal tribunal, according to its international obligations, or to prosecute him or her, in accordance with the provisions of the Convention. The State party should also ensure that this Act establishes jurisdiction over acts of torture committed by nationals of Sierra Leone abroad irrespective of whether the alleged perpetrators were persons acting in an official capacity or public officials acting outside their official duties.

Extradition and mutual assistance

(22) The Committee notes that the Extradition Act makes extradition contingent on the existence of an extradition treaty with a listed number of countries. However the Committee is concerned that the crimes enumerated in article 4 of the Convention are not explicitly included in the Extradition Act as extraditable offences. Moreover, the State party has not clarified whether it had invoked the Convention as a legal basis for extradition with regard to these crimes when it received a request for extradition from another State party with which it has no extradition treaty. The Committee is also concerned at the fact that there are no provisions concerning mutual judicial assistance that could apply in the case of the crimes enumerated in article 4 of the Convention (arts. 8 and 9).

In accordance with the undertaking made to the Committee, the State party should:

(a) Amend the Extradition Act to ensure that the crimes enumerated in article 4 of the Convention are considered as extraditable offences;

(b) Take the necessary legislative and administrative measures to ensure that the Convention can be invoked as a legal basis for extradition in respect of the crimes enumerated in article 4 of the Convention when it receives a request for extradition from any other State party with which it has no extradition treaty, while at the same time observing the provisions of article 3 of the Convention;

(c) Take the necessary legislative and administrative measures to provide mutual judicial assistance to other State parties in all matters of criminal procedure regarding the crimes enumerated in article 4 of the Convention, including by incorporating into national legislation multilateral agreements with mutual assistance provisions already ratified by the State party.

Training

(23) While noting the inclusion of the prohibition of torture in the Police Training School-Recruit Manual, the Committee is concerned at the absence of specific and periodic training on the Convention, and the omission of the absolute prohibition of torture in the rules and instructions governing military personnel, police officers, prison staff, immigration officers and law enforcement personnel such as judges, prosecutors and lawyers. It is also concerned at the fact that the guidelines set out in the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol, 1999) are not followed in investigations into cases of torture or ill-treatment (art. 10).

The Committee recommends that the State party:

(a) Include the absolute prohibition of torture in all the rules and instructions applicable to civil and military law enforcement personnel, or persons involved in the custody, interrogation or treatment of persons deprived of their liberty;

(b) Disseminate widely training programmes with customized modules on the Convention to ensure that security and law enforcement personnel, civil and military, are fully aware of the provisions of the Convention and particularly of the absolute prohibition of torture;

(c) Provide training in respect of the Istanbul Protocol on a regular and systematic basis to medical personnel, forensic doctors, judges, immigration officers, prosecutors and all other persons involved in the custody, interrogation or treatment of persons deprived of their liberty, as well as to anyone else involved in investigations into cases of torture;

(d) Assess and evaluate as far as practicably possible the effectiveness of educational and training programmes dealing with the Convention and the Istanbul Protocol.

Pretrial detention

(24) The Committee welcomes the ongoing reform of the Criminal Procedure Act, aimed at accelerating trials and enabling the imposition of alternative methods of serving sentences. The Committee remains concerned, however, at the fact that pretrial detainees reportedly account for more than half of the prison population. The Committee notes with concern the excessive resort to imprisonment for minor offences and the current restrictive use of alternative measures of detention, due in part to the lack of sureties. The Committee also takes note of information indicating that, although the remand warrant cannot legally exceed eight days, it is normally not renewed, due to the lack of magistrates, or not respected. The Committee observes, with concern, that these aspects have a direct impact on the serious overcrowding of prisons (arts. 2, 11, 12 and 16).

The State party should:

(a) Ensure that the Criminal Procedure Act 2014 is promptly adopted, incorporating these recommendations, and is given force of law;

(b) Review the provisions on alternative measures of detention in order to remove the obstacles to their effective application;

(c) Reduce the length and the number of pretrial detentions and ensure that pretrial detainees receive a fair and prompt trial;

(d) Increase the use of non-custodial measures and community service orders, especially for minor offences, and sensitize the relevant judicial personnel to the use of such measures, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules).

Juvenile justice

(25) The Committee is concerned that the number of children in detention has steadily increased and that minors remain in detention for months before their cases are adjudicated. Moreover, the Committee is concerned at reports indicating that children below the age of criminal responsibility have allegedly been charged and convicted, and that children have been detained with adults, especially in police cells or when their age could not be verified. The Committee also notes with concern that the insufficient number of courts in rural areas restricts juveniles' access to justice (arts. 2, 11, 12 and 16).

The State party should:

(a) Introduce and use non-custodial measures for minors who are in conflict with the law and ensure that they are only detained as a last resort and for the shortest possible time;

(b) Make sure that minors who are deprived of their liberty are afforded full legal safeguards and are held separately from adults in all prisons and detention cells throughout the country, in the light of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines);

(c) Ensure that children are not subjected to any kind of abuse on account of their vulnerabilities.

Detention conditions

(26) While acknowledging the willingness to improve the situation in prisons through the drafting of the Correctional Services Bill, the Committee is still deeply concerned at:

(a) The deplorable material and infrastructural conditions of prisons for an overcrowded prison population;

(b) The appalling conditions of detention, such as lack of sufficient ventilation and lighting, the absence of beds and bedding and the poor functioning of the toilets in police and local courts cells, and lack of access to drinking water and adequate food;

(c) The obstacles to medical care or treatment of prisoners in public hospitals;

(d) The reported lack of separation between suspects, and remanded and convicted prisoners;

(e) Lack of an Earning Scheme for prisoners, as mandated by sections 19, 20 and 21 of the Prison Rules of 1961. As acknowledged in the State report, prisoners are requested to "labour in government offices and private residences without any compensation" (CAT/C/SLE/1, para. 70);

(f) Ineffectiveness of internal complaints procedures and inspection mechanisms (arts. 2, 11 and 16).

The State party should redouble its efforts to improve detention conditions and to ensure that they conform to the Convention and with the appropriate provisions of the United Nations Standard Minimum Rules for the Treatment of Prisoners, which are currently under revision. To this end, it should, inter alia:

(a) Adopt the necessary legislative, judicial, administrative and other measures to regulate the conditions of detention in police and local court cells and ensure that the Correctional Services Bill complies with these recommendations;

(b) Allocate sufficient resources and adopt a precise time frame for the renovation, maintenance and construction of prisons and detention facilities, as undertaken by the State delegation;

(c) Ensure, as a minimum, access to basic services, including access to water for drinking and other use, at least two nutritious meals a day, appropriate hygiene conditions such as functioning toilets, beds, mattress and bedding, sufficient natural and artificial light and ventilation in cells, and mosquito nets;

(d) Provide medical care and prompt hospitalization for suspects and prisoners and allocate sufficient resources to the public health care system to cover the costs of hospitalization;

(e) Set up an Earning Scheme for prisoners that wish to work;

(f) Ensure that remand prisoners are separated from convicted prisoners, and female suspects are separated from male suspects and attended by female officers;

(g) Ensure that prisoners have meaningful access to an independent and confidential system for lodging complaints about conditions of detention, including ill-treatment, and ensure that thorough, impartial and independent investigations are conducted into any and all complaints;

(h) Establish a permanent and independent prison monitoring system, ensuring unrestricted access to the Ombudsman and the Human Rights Commission of Sierra Leone, as well as other human rights organizations, to all places of detention, in particular for unannounced visits and private interviews with detainees.

Ill-treatment in detention

(27) The Committee is highly concerned at information indicating that cases of violence and deaths in custody have not been sufficiently investigated, including the death in custody of Lamin Kamara, allegedly as a consequence of torture. The Committee is also concerned at the alleged use of corporal punishment and solitary confinement for prisoners, as permitted by the Prison Ordinance Act of 1960 and the Prison Rules of 1961, as well as reduction in diet and the use of handcuffs and other means of restraint as a punishment (arts. 2, 11 and 16).

The State party should:

(a) Ensure that the Correctional Services Bill, aimed at replacing the Prison Ordinance Act of 1960 and the Prison Rules of 1961, is promptly adopted and complies with the commitment taken by the State delegation to eliminate corporal punishment and solitary confinement;

(b) Take all appropriate measures to prevent, investigate and punish violence in prisons, including sexual violence, and ensure that all cases of death in custody, including the death of Lamin Kamara, are promptly and effectively investigated;

(c) Avoid the use of restraints as much as possible or apply them as a last resort when all other non-coercive alternatives for control have failed, never as a punishment, for the shortest possible time, and after being duly recorded. Reduction in diet as a punishment should be prohibited.

Prompt, thorough and impartial investigations

(28) While welcoming the recent establishment of the Independent Police Complaints Board, the Committee notes with concern that the disciplinary bodies within the Army and prison system are still hierarchically connected to the officials being investigated, as acknowledged in the State report (CAT/C/SLE/1, para. 74). The Committee also considers that the function of the Attorney General as a Minister of Justice could compromise its institutional independence. The Committee is also concerned as to the independence and effectiveness of the criminal investigations into allegations of torture or ill-treatment committed by public officials, since at magistrate courts crimes are prosecuted by police prosecutors, and any private citizen may also carry out a prosecution, which can be taken over or terminated at the discretion of the Attorney General. The Committee is further concerned that the State party was unable to provide disaggregated data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment (arts. 2, 11, 12, 13 and 16).

The State party should:

(a) Separate the Office of the Attorney General and that of the Minister of Justice during the constitutional review process, as recommended by the Truth and Reconciliation Commission and undertaken by the State delegation;

(b) Take appropriate measures to ensure that a prompt, thorough and impartial criminal investigation is opened ex officio by a State counsel where there are reasons to believe that an act of torture or ill-treatment has been committed, bring the suspects to trial and, if found guilty, sentence them to penalties that take into account the grave nature of their acts;

(c) Ensure that the disciplinary bodies of the Army and prison staff are independent and not hierarchically or functionally connected to the persons investigated and establish an independent and confidential complaint system, ensuring that prompt, impartial and independent investigations into such complaints are conducted;

(d) Ensure that persons under investigation for having committed acts of torture or ill-treatment are immediately suspended from their duties and remain so throughout the investigation, subject to the observance of their own rights to a fair trial.

Redress and rehabilitation for victims of torture

(29) While noting the establishment in 2008 of the Sierra Leone Reparations Programme for victims of the civil war, the Committee is concerned at the limited scope of the reparations, the financial constraints of the National Trust Fund for Victims and the large number of victims that have allegedly not been registered as beneficiaries. The Committee also notes that, under criminal and civil proceedings, victims of crimes may obtain compensation and restitution for the harm suffered, but there are no rehabilitation measures, including medical treatment and social rehabilitation services, for victims of torture or ill-treatment. The Committee expresses concern at the lack of information on cases in which the State party has been liable for compensation in relation to damages caused by its agents in connection with torture and ill-treatment (arts. 2 and 14).

The State party should:

(a) Allocate the necessary resources to the Sierra Leone Reparations Programme to provide fair and adequate compensation and as full rehabilitation as possible to all the victims of the civil war, and increase its efforts to register victims living in remote areas as beneficiaries;

(b) Take the necessary legislative and administrative measures to ensure that victims of torture and ill-treatment are able to effectively and expeditiously claim and receive all forms of redress, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, ensuring that free legal assistance is provided to victims for that purpose;

(c) Allocate the necessary resources to set up a rehabilitation programme for victims of torture, including free medical assistance to victims.

The Committee draws the attention of the State party to the Committee's recently adopted general comment No. 3 on the implementation of article 14, which explains and clarifies the content and scope of the obligations of States parties with a view to providing full redress to victims of torture.

Corporal punishment

(30) While acknowledging that the current Correctional Services Bill includes the prohibition of corporal punishment in prisons and section 33 of the Child Rights Act 2007 prohibits torture and inhuman and degrading treatment of children, the Committee is concerned that corporal punishment has not yet been explicitly prohibited in the Child Rights Act or any other act in force and is culturally entrenched and lawful in all settings, including the home, schools, day care, alternative care settings and in penal institutions (art. 16).

The Committee reminds the State party of the commitment it made during the dialogue with the Committee and recommends that it take the necessary legislative measures to explicitly prohibit corporal punishment in all settings, conduct public awareness-raising campaigns about its harmful effects, and promote positive non-violent forms of discipline as an alternative to corporal punishment.

Data collection

(31) The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment perpetrated by law enforcement and prison personnel, as well as on deaths in custody, extrajudicial killings, sexual and gender-based violence, including domestic violence, ritual murders, lynching and criminal conduct related to harmful traditional practices.

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment, deaths in custody, extrajudicial killings, enforced disappearances, sexual and gender-based violence, including domestic violence, human trafficking, ritual murders, lynching, criminal conduct related to harmful traditional practices, as well as on means of redress provided to victims, including compensation and rehabilitation, and on refugee and asylum applications, the prevalence of female genital mutilation and the number of persons detained and convicted.

Other issues

(32) The Committee recommends that the State party ratify the Optional Protocol to the Convention. It also recommends that the State party make the declarations provided for in

articles 21 and 22 of the Convention in order to recognize the competence of the Committee to receive and consider communications.

(33) The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, namely, the International Convention for the Protection of All Persons from Enforced Disappearance, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Second Optional Protocol to the International Covenant on Civil and Political Rights. In addition, the State party should consider becoming a party to the Convention relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961).

(34) The State party is requested to disseminate widely the report it submitted to the Committee and the Committee's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

(35) The Committee requests the State party to provide, by 23 May 2015, follow-up information in response to the Committee's recommendations related to (a) ensuring or strengthening legal safeguards for persons in detention; (b) conducting prompt, impartial and effective investigations into cases of the involvement of members of law enforcement agencies in unlawful killings; and (c) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as specified in paragraphs 11, 13 and 28 (b) of the present concluding observations. In addition, the Committee requests follow-up information on the regulation of the absolute prohibition of torture in the Constitution and the use of alternative measures of detention, as contained in paragraphs 10 and 24 of the present concluding observations.

(36) The State party is invited to submit its next report, which will be its second periodic report, by 23 May 2018. For that purpose, the Committee invites the State party to agree, by 23 May 2015, to report under its optional reporting procedure, which entails the transmittal, by the Committee to the State party, of a list of issues prior to the submission of the report. The State party's response to this list of issues will constitute, under article 19 of the Convention, its next periodic report.

69. Thailand

(1) The Committee against Torture considered the initial report of Thailand (CAT/C/THA/1) at its 1214th and 1217th meetings (CAT/C/SR.1214 and 1217), held on 30 April and 1 May 2014, and adopted the following concluding observations at its 1239th meeting (CAT/C/SR.1239), held on 16 May 2014.

A. Introduction

(2) The Committee welcomes the submission of the initial report of Thailand (CAT/C/THA/1) and the common core document (HRI/CORE/THA/2012). However, it regrets that the report was submitted with a delay of five years, which prevented it from monitoring the implementation of the Convention in the State party during that time. The Committee also notes that while the report generally follows the guidelines on the form and content of initial reports (CAT/C/4/Rev.3), statistical information on the implementation of the Convention in the State party is lacking.

(3) The Committee appreciates the open and constructive dialogue with the high-level delegation of the State party and the additional information provided by the delegation.

(4) The Committee is deeply concerned at the declaration of martial law throughout Thailand, since its recent dialogue with the State party. It emphasizes that the State party should adhere strictly to the absolute prohibition of torture and ensure that the application of martial law does not, under any circumstances, contradict the rights guaranteed in the

Convention. In that regard, the Committee draws the State party's attention to paragraphs 11 and 12 of the present concluding observations, which deal with the state of emergency in the southern border provinces as well as the three special laws currently in effect in Thailand. The Committee urges the State party to ensure that the application of martial law throughout Thailand does not, under any circumstances, contradict the rights guaranteed in the Convention.

B. Positive aspects

(5) The Committee welcomes the ratification by the State party of the Convention on the Rights of Persons with Disabilities, in 2008.

(6) The Committee welcomes the following legislative measures taken by the State party in areas of relevance to the Convention, including the adoption of:

(a) The Penal Code Amendment Act (Nos. 19 and 20), in 2007, and (No. 21), in 2008;

(b) The Criminal Procedure Code Amendment Act (Nos. 25 and 26), in 2007;

(c) The Domestic Violence Victim Protection Act, in 2007;

(d) The Anti-Trafficking in Persons Act, in 2008;

(e) The Juvenile and Family Court and Procedures Act, in 2010.

(7) The Committee notes with appreciation the voluntary pledges and commitments made in the context of the universal periodic review that Thailand will amend its laws to bring them into line with the international human rights instruments, including ensuring that criminal laws are in line with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Committee also welcomes the invitation to the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment to visit the State party during this year.

C. Principal subjects of concern and recommendations

Declarations under articles 1, 4 and 5 of the Convention

(8) The Committee is concerned about the interpretative declarations that the State party made at the time of accession to the Convention, on 2 October 2007, with regard to articles 1, 4 and 5 of the Convention, in which the State party declares that it will, inter alia, interpret the term "torture" in conformity with the Penal Code currently in force in the State party, which does not contain a definition of torture. The Committee notes that the State party had also declared at the time that it would "revise its domestic law to be more consistent with [articles 1, 4, and 5] of the Convention at the earliest opportunity" and that it had reiterated that commitment in its initial report (para. 60) as well as during the dialogue. The Committee further notes that, in its common core document, the State party indicated that a number of reservations made at the time of ratification to other human rights treaties had been withdrawn further to commitments it had made during the universal periodic review.

Noting that the declarations raise questions as to the State party's overall implementation of its treaty obligations, and appreciating the statement made by the representative of the State party that the possibility of withdrawal was being discussed, the Committee recommends that the State party consider withdrawing the declarations to articles 1, 4 and 5 of the Convention promptly so as to ensure it is in compliance with the requirements of the Convention and gives effect to all the provisions of the Convention.

Definition and criminalization of torture

(9) While noting that Section 32, paragraph 2, of the Constitution of Thailand prohibits acts of torture, the Committee is concerned about the absence of a definition of torture and that torture is not recognized as an offence, in accordance with the Convention, in the State party's legal system. In addition, the Committee is concerned that the draft amendment to the Penal Code with regard to torture, (a) does not reflect the non-exhaustive list of purposes for which torture may be inflicted nor does it include discrimination as a purpose; (b) provides for a higher degree of pain and suffering than that set forth in article 1 of the Convention; (c) contains a definition of "public official" that is more limited than that set forth in the Convention; (d) does not explicitly prohibit affirmative defences to the crime of torture; and (e) does not explicitly prohibit the application of a statute of limitations. The Committee appreciates the delegation's reassurance that the draft can still be revised.

The shortcomings cited above seriously hamper the implementation of the Convention by preventing the prosecution of torture in Thailand. The Committee notes the State party's commitment to revise its Penal Code and Criminal Procedure Code, including the draft amendment, to define torture and include the offence of torture, in line with articles 1 and 4 of the Convention (arts. 1 and 4).

Recalling the Committee's general comment No. 2 (2008) on implementation of article 2 by States parties, the Committee urges the State party to revise its legislation without delay, in order to:

(a) To adopt a definition of torture that covers all the elements contained in article 1 of the Convention;

(b) To include torture as a separate and specific crime in its legislation and ensure that penalties for the crime of torture are commensurate with the gravity of the crime, as required by article 4, paragraph 2, of the Convention;

(c) To ensure that acts amounting to torture are not subject to any statute of limitation.

Allegations of widespread use of torture and ill-treatment

(10) While noting with appreciation the State party's public statement that it fully recognizes the importance of the Convention and its acknowledgement of the Committee's concerns about the need for impartial and independent investigations, the Committee remains seriously concerned about the continued allegations of widespread torture and ill-treatment of detainees, including as a means of extracting confessions, by the military, the police and prison officials in the south and other parts of the country.

The Committee calls upon the State party to take immediate and effective measures to investigate all acts of torture and ill-treatment and to prosecute and punish those responsible with penalties that are commensurate with the gravity of their acts. In addition to those measures, the State party should unambiguously reaffirm the absolute prohibition of torture and publicly condemn all practices of torture, accompanied by a clear warning that anyone committing such acts or otherwise complicit or participating in torture will be held personally responsible before the law and will be subject to criminal prosecution and appropriate penalties.

Situation in the southern border provinces

(11) The Committee expresses concern at the numerous allegations of torture and ill-treatment during the state of emergency in the southern border provinces and notes that the state of emergency has been prolonged and that the exercise of fundamental human rights has been restricted (arts. 2, 4, 11, 12, 13, 15 and 16).

The State party should ensure that the absolute and non-derogable nature of the prohibition of torture is incorporated into its legislation, and that the legislation is strictly applied, in accordance with article 2, paragraph 2, of the Convention, which stipulates that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. Moreover, the State party should assess the need for the special laws, bearing in mind that the conditions for declaring an emergency and enacting emergency laws are strictly and narrowly defined and should be limited to exceptional circumstances.

Special laws

(12) While noting that the delegation of the State party cited 2,889 bombing incidents in the south and thousands of civilian and military personnel casualties, the Committee remains seriously concerned about the numerous, ongoing and consistent allegations about the routine use of torture and ill-treatment by security and military officials in the southern border provinces to obtain confessions. That situation is exacerbated by the application of three special laws, namely the 1914 Martial Law Act, the 2005 Emergency Decree and the 2008 Internal Security Act, which provide broad emergency powers to the security and military forces outside of judicial control and reinforce a climate of impunity for serious human rights violations. The Committee is gravely concerned that:

(a) The special laws provide for enlarged executive powers of administrative detention, without adequate judicial supervision, and weaken fundamental safeguards for persons deprived of their liberty. Under section 15 of the Martial Law Act and section 12 of the Emergency Decree, a suspect can be held for as long as 37 days, without a warrant or judicial oversight, before being brought before a court. Also, there is no requirement for a detainee to be brought before a court at any stage of his or her detention, nor is the location of detention always disclosed;

(b) Safeguards against torture, which are provided by the law, and regulations are allegedly not respected in practice and, in particular, detainees are often denied the right to contact and receive visits by family members promptly after their deprivation of liberty; also, some necessary safeguards, such as the right to contact a lawyer and to be examined by an independent doctor promptly upon deprivation of liberty, are not guaranteed in law or in practice;

(c) The special laws, in particular section 7 of the Martial Law Act and section 17 of the Emergency Decree, explicitly limit the accountability of officials enforcing the state of emergency by granting immunity from prosecution for serious human rights violations, including acts of torture, in violation of the provisions of the Convention. The Committee is concerned at the death in custody of Imam Yapa Kaseng and Sulaiman Naesa, which highlights the obstacles to bringing perpetrators to justice (arts. 2, 4, 12, 13 and 15).

The State party should, as a matter of urgency, take vigorous steps to review without delay its existing emergency laws and practice and repeal those incompatible with its obligations under the Convention, in particular by ensuring that:

(a) Detainees held without charge under security laws are brought in person before a court;

(b) Detainees taken into custody are permitted to contact family members, lawyers and independent doctors promptly following deprivation of liberty, both in law and in practice, and that the provision of these safeguards by the authorities is monitored effectively;

(c) No immunity from prosecution is granted to officials who commit offences associated with human rights violations, including torture and ill-treatment. Furthermore, the State party should carry out prompt, impartial and thorough investigations, bring the perpetrators of such acts to justice and, if convicted, impose sentences commensurate with the gravity of the acts committed;

(d) No one is coerced into testifying against themselves or others or confessing guilt and no such confession is accepted as evidence in court, except against a person accused of torture or other ill-treatment, as evidence that the confession or other statement was made.

Fundamental legal safeguards

(13) The Committee is seriously concerned that, in practice, all arrested and detained persons are not provided with all the fundamental legal safeguards from the very outset of their deprivation of liberty. Such legal safeguards include, but are not limited to, maintenance of an official register of detainees, the right of detainees to be informed of their rights, the right to promptly receive independent legal assistance and independent medical assistance and to contact relatives, impartial mechanisms for inspecting and visiting places of detention and confinement, and the availability of judicial and other remedies to detainees and persons at risk of torture and ill-treatment that would allow them to have their complaints promptly and impartially examined, to defend their rights and to challenge the legality of their detention or ill-treatment. The Committee is further concerned that information requested on monitoring safeguards was not provided, including information on the success of habeas corpus petitions (art. 2).

The State party should take effective measures to ensure, in law and in practice, that all detainees are afforded all fundamental legal safeguards from the very outset of their detention, including the rights to have prompt access to an independent lawyer and an independent medical doctor, to notify a relative, to be informed of their rights at the time of detention, including about the charges laid against them, to be registered at the place of detention and to appear before a judge within a reasonably period of time, in accordance with international standards. The State party should also take the necessary measures to provide an effective free legal aid system and put in place measures to monitor the practice of all law enforcement and security officials to ensure that those safeguards are provided in practice as well as in law. The State party should take disciplinary or other measures against officials responsible in cases where those safeguards are not provided to persons deprived of their liberty.

Enforced disappearance

(14) While welcoming the signature by the State party of the International Convention for the Protection of All Persons from Enforced Disappearance and the delegation's statement that ratification is envisioned, the Committee remains seriously concerned at:

(a) The absence of a definition of enforced disappearance and the absence of the recognition of enforced disappearance as an offence in the domestic legislation;

(b) The continuing and numerous alleged cases of enforced disappearance, in particular against human rights, anti-corruption and environmental activists as well as witness of human rights violations, as revealed by the recent case of the disappearance of Pholachi Rakcharoen (known as "Billy), a human rights defender from Karen, Myanmar. It has been reported that enforced disappearance is used as a method of harassment and repression against human rights defenders by the security and military forces, in particular in the highly militarized counter-insurgency context in southern Thailand;

(c) The failure to resolve most cases of enforced disappearance, provide remedy to the relatives of missing persons, and prosecute those responsible, as demonstrated in numerous cases, including the disappearance of Somchai Neelaphaijit, Jahwa Jalo and Myaleng Maranor. The Committee notes with concern the general allegations made by the Working Group on Enforced or Involuntary Disappearances that no case of enforced disappearance has led to the prosecution or conviction of the perpetrator and that reparation, including compensation has been extremely limited in Thailand (A/HRC/22/45, paras. 457–466) (arts. 2, 4, 12, 14 and 16).

The State party should take all the necessary measures to prevent enforced disappearances and to combat impunity for the crime of enforced disappearance, in particular by:

(a) Taking legal measures to ensure that enforced disappearance is a specific crime in Thai domestic law, with penalties that take into account the grave nature of such disappearances;

(b) Ensuring that all cases of enforced disappearance are thoroughly, promptly and effectively investigated, suspects are prosecuted and those found guilty are punished with sanctions proportionate to the gravity of their crimes, even when no body or human remains are found. The Committee reminds the State party that where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, the authorities are required to undertake an investigation, even if there has been no formal complaint;

(c) Ensuring that any individual who has suffered harm as the direct result of an enforced disappearance has access to information about the fate of the disappeared person as well as to fair and adequate compensation, including any necessary psychological, social and financial support. The Committee reminds the State party that, for the family members of a disappeared person, enforced disappearance may constitute a breach of the Convention;

(d) Adopting measures to clarify the outstanding cases of enforced disappearance and facilitating the request by the Working Group on Enforced or Involuntary Disappearances to visit the country (A/HRC/22/45, para. 471);

(e) Accelerating the process for ratifying the International Convention for the Protection of All Persons from Enforced Disappearance.

Impunity

(15) While noting the State party's position that current Thai laws are adequate for punishing public officers who commit acts of torture, the Committee remains deeply concerned at the climate of de facto impunity for acts of torture committed in the State party in view of the following:

(a) The lack of prompt and impartial investigation of allegations of torture and ill-treatment committed by law enforcement personnel. When torture allegations are investigated, the agency of the accused usually conducts the investigation and charges are often dismissed;

(b) Delays in investigating cases of torture;

(c) Discrepancies regarding the numerous allegations of torture and ill-treatment by State officers and the very low number of complaints brought to the authorities, which might indicate a lack of confidence in the police and judicial authorities and a lack of awareness of their rights on the part of victims;

(d) The almost total absence of criminal sanctions against responsible officers, public prosecutors. Furthermore, on occasion, judges disregard defendants' claims that they have been tortured or classify the acts in question as less serious offences (arts. 2, 4, 12 and 13).

In view of widespread impunity, the State party should, as a matter of urgency:

(a) Publicly condemn practices of torture and give a clear warning that anyone committing such acts, or otherwise complicit, acquiescent or participating in torture, will be subject to criminal prosecution and upon conviction, appropriate penalties;

(b) Take all necessary measures to ensure that all allegations of torture or ill-treatment are promptly, thoroughly and impartially investigated by a fully independent civilian body, that perpetrators are duly prosecuted and, if found guilty, convicted with penalties that are commensurate with the grave nature of their crimes;

(c) Suspend officers suspected of committing acts of torture during the investigation of allegations of torture and ill-treatment;

(d) Ensure that military personnel are tried in civilian courts for acts of torture and similar offences;

(e) Establish an independent complaints system for all persons deprived of their liberty.

Gender-based violence

(16) While welcoming the efforts made by the State party to combat violence against women, in particular by criminalizing domestic violence under section 4 of the 2007 Domestic Violence Victim Protection Act, the Committee remains concerned about:

(a) The high prevalence of gender-based violence, in particular sexual and domestic violence in Thailand;

(b) The low level of prosecution for sexual and domestic violence, mainly due to obstacles inherent in the legal framework and the unresponsive attitude of the police and the judiciary towards such violence. The Committee is also concerned that, as domestic violence is a "compoundable" offence, the victim must lodge a complaint in order for the offence under section 4 of the 2007 Domestic Violence Victim Protection Act to be prosecuted and that the arriving at a settlement in cases of domestic violence has priority over the victim's well-being and safety, under section 15 of the Act. As a result, the Committee regrets that, in practice, domestic violence is treated as a private matter rather than a serious public criminal offence;

(c) Discriminatory rules of evidence in legal procedures of rape cases, which result in re-victimization and stigmatization of victims as well as lack of prosecution for the perpetrator. The relevant legislation fails to regulate the admissibility of evidence;

(d) Barriers in accessing legal protection and redress for vulnerable groups, including Malay Muslim women in the southern border provinces (arts. 2, 14 and 16).

The State party should further strengthen its efforts to address all forms of gender-based violence and abuse, in particular sexual and domestic violence, through legislative, judicial, administrative and other measures, including policy and social measures, in particular, by:

(a) Revising the relevant provisions of the Penal Code, the Criminal Procedure Code and the Domestic Violence Victim Protection Act, with a view to facilitating complaints by victims, informing them about recourse available and strengthening the legal assistance and psychosocial protection systems for victims of domestic violence;

(b) Promptly, effectively and impartially investigating all allegations of sexual and domestic violence with a view to prosecuting those responsible. The State party should remove obstacles to the prosecution of perpetrators of domestic violence and ensure that police officers refusing to register such complaints are appropriately disciplined.

Trafficking

(17) While noting the efforts made by the State party to prevent and combat trafficking in persons, including the adoption of the Human Trafficking Prevention and Suppression Act, in 2008, the Committee is concerned at the numerous reports of trafficking in persons for the purpose of sexual exploitation or forced labour. The Committee shares the concerns raised by the Special Rapporteur on trafficking in persons, especially women and children, with regard to such issues as the lack of capacity and willingness of law enforcement authorities to properly identify trafficked persons, the arrest, detention and summary deportation of trafficked persons, the lack of adequate support for the recovery of trafficked persons in shelters and the low rate of prosecution and delays in prosecuting trafficking cases (arts. 2, 12, 13 and 16).

The State party should intensify its efforts to prevent and combat trafficking in persons, by providing protection for victims, including shelters and psychosocial assistance and by conducting prompt, impartial investigation of trafficking with a view to prosecuting and punishing perpetrators with penalties appropriate to the nature of their crimes. The Committee encourages the State party to take all necessary measures to fully implement the recommendations contained in the report of the Special Rapporteur on trafficking in persons, especially women and children, on her mission to Thailand (A/HRC/20/18/Add.2, para. 77).

Human rights defenders

(18) The Committee is concerned at the numerous and consistent allegations of serious acts of reprisals and threats against human rights defenders, journalists, community leaders and their relatives, including verbal and physical attacks, enforced disappearances and extrajudicial killings, as well as by the lack of information provided on any investigations into such allegations (arts. 2, 12, 14 and 16).

The State party should take all the necessary measures to: (a) put an immediate halt to harassment and attacks against human rights defenders, journalists and community leaders; and (b) systematically investigate all reported instances of intimidation, harassment and attacks with a view to prosecuting and punishing perpetrators, and guarantee effective remedies to victims and their families. In that regard, the Committee recommends that the Thai authorities provide the family of Somchai Neelaphaijit with full reparation and take effective measures aimed at the cessation of continuing violations, in particular by guaranteeing the right to truth (general comment No. 3, para. 16).

Witness and victim protection

(19) While noting that the 2003 Witnesses Protection Act provides general or special protection measures for witnesses in criminal cases through the Department of Rights and Liberties Protection and the Department of Special Investigation under the Ministry of Justice, the Committee remains concerned at:

(a) The numerous and consistent cases of intimidation and attacks against witnesses to and victims of human rights violations. The Committee expresses serious concern at the disappearance of Abdullah Abukari while under the protection of the Department of Special Investigation. Mr. Abukari was allegedly a witness in the case of the enforced disappearance and murder of Somchai Neelaphaijit and he was tortured by police;

(b) The absence of an effective mechanism and an independent protection agency to ensure protection of and assistance to witnesses and victims of torture and ill-treatment. In addition to the concerns raised by the State party about loopholes in the provision of protection to petitioners in torture cases under the current Act (CAT/C/THA/1, para. 144), other allegations before the Committee raise question as to fairness on the part of agencies in charge of witness protection, of which the majority of the staff are former police officers;

(c) The lack of guidance and training for officers assigned to witness protection;

(d) The absence of protection for defendants, under the current Act;

(e) Cases of complainants and witnesses in torture cases who later face charges of criminal defamation (arts. 2, 11, 12, 13 and 15).

The State party should revise its legislation and practices to ensure that witnesses and victims of human rights violations, including of torture and enforced disappearance, and members of their families are effectively protected and assisted, in particular by:

(a) Amending the Witness Protection Act to cover all proceedings, including civil and administrative proceedings, and to expand the category of persons that can receive protection;

(b) Ensuring that perpetrators do not influence protection mechanisms and that they are held accountable;

(c) Taking steps to inform the public of the Witness Protection Act and to allow witnesses in torture cases to invoke protective services;

(d) Abolishing criminal defamation or providing protection for complainants and witnesses in torture cases from criminal defamation.

Non-refoulement

(20) While welcoming the State party's continued commitment to hosting refugees in need of international protection on its territory, the Committee is concerned at reports of refoulement of asylum seekers, as well as the absence of a national legal framework regulating expulsion, refoulement and extradition, consistent with the requirements of article 3 of the Convention. Moreover, noting the information about the State party's effort to provide humanitarian assistance to Rohingya refugees coming into the State party, the Committee expresses concern at reports of some potential refugees being turned back at sea. It also regrets the lack of information on the number of cases of refoulement, extradition and expulsion carried out and on the number of instances and types of cases for which the State party has offered and/or accepted diplomatic assurances or guarantees (art. 3).

The Committee recommends that the State party adopt appropriate legislation and procedures to comply with the principle of non-refoulement and to protect refugees and asylum seekers, in line with article 3 of the Convention, in particular by:

(a) Amending the Immigration Act and establishing a national asylum system to provide the legal framework required to address the situation of refugees and asylum seekers. Moreover, the State party should take the necessary measures, in cooperation with the United Nations High Commissioner for Refugees (UNHCR), to review its procedures for determining refugee status;

(b) Providing protection and rehabilitation support to victims rescued from human smugglers' camps in southern Thailand and defining the temporary protection regime and related rights granted to Rohingya refugees and stateless persons, including protection from refoulement;

(c) Acceding to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

Immigration detention

(21) The Committee is concerned at the use of lengthy and, in some cases, indefinite detention in immigration detention centres for asylum seekers and migrants who enter the State party undocumented, as well as at the lack of an independent and systematic review of such detention decisions and the restrictive use of alternatives to detention for asylum seekers (arts. 3, 11 and 16).

The State party should review its detention policy with regard to asylum seekers and give priority to alternatives to detention. The State party should end indefinite detention for asylum seekers and migrants and guarantee them access to independent, qualified and free legal advice and representation, in order to ensure that persons in need of international protection are duly recognized and refoulement is prevented.

Conditions of detention

(22) While acknowledging that the State party has taken a number of measures to improve conditions in detention centres, including the allocation of additional resources to improve the situation of the immigration detention facilities in Songkhla province, the Committee remains seriously concerned at the extremely high levels of overcrowding and harsh conditions prevailing in detention facilities, including immigration detention centres. Such conditions include insufficient ventilation and lighting, poor sanitation and hygiene facilities and inadequate access to health care. The Committee expresses its concern at reports that the lack of medical care has contributed to the spread of diseases and deaths in custody, as in the cases of Rohingya and the Lao Hmong in immigration detention centres, which were raised by the Special Rapporteur on the question of torture and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Reports before the Committee indicate incidents of continuing violence in detention, including sexual violence by prison guards or other prisoners with the acquiescence of the authorities. The Committee also regrets the lack of information about the so-called "white prison" policy, which is alleged to result in further restrictions on the rights and freedom of detainees (arts. 11 and 16).

The State party should strengthen its efforts to improve prison conditions in order to end any cruel, inhuman or degrading treatment or punishment, in particular by:

(a) Taking all necessary measures to remedy the high rate of prison overcrowding, in particular by instituting alternatives to custodial sentences, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);

(b) Ensuring the basic needs of persons deprived of their liberty with regard to sanitation, medical care, food and water. The State party should consider transferring responsibility for health issues in prisons from the Department of Corrections to the Ministry of Health;

(c) Taking measures to prevent violence in prison and to investigate all such incidents in order that the suspected perpetrators may be brought to trial and victims may be protected.

Use of shacking and solitary confinement

(23) While noting that the State party has reviewed and reduced the use of shackles in detention facilities, the Committee expresses concern at: (a) the continued use of

instruments of restraint, such as shackles, as disciplinary measures; and (b) the lack of adequate safeguards and monitoring mechanisms on the use of such restraining devices. The Committee also regrets the use of solitary confinement, often in unhygienic conditions and with physical neglect, of up to three months, as a mean of punishment (art. 16).

The State party should ensure that the use of restraints is avoided or applied under strict medical supervision, and that any such act is duly recorded. In particular, the State party should end the use of permanent shackling of death-row prisoners, the use of shackles as a punishment and prolonged solitary confinement. Furthermore, the use of solitary confinement should be limited as a measure of last resort and for as short a time as possible, under strict supervision and with the possibility of judicial review.

Monitoring and inspection of places of deprivation of liberty

(24) The Committee notes that visits to detention facilities can be undertaken by all agencies, including non-governmental and international organizations, upon request and with prior permission. It further notes the delegation's statement that the State party hopes to become a party to the Optional Protocol to the Convention by 2015. Nonetheless, the Committee is concerned at the lack of systematic, effective and independent monitoring and inspection of all places of detention (arts. 11 and 12).

The State party should:

(a) Ensure the effective monitoring and inspection of all places of detention through regular and unannounced visits by independent national and international monitors, including non-governmental organizations, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment;

(b) Make the recommendations of the monitors public and follow up on the outcome of such systematic monitoring;

(c) Collect information on the place, time and periodicity of visits, including unannounced visits, to places of deprivation of liberty, and on the findings and the follow-up to the outcome of such visits;

(d) Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and establish a national preventive mechanism.

National Human Rights Commission

(25) The Committee notes with interest that the National Human Rights Commission of Thailand (NHRCT) has broad competence to receive and investigate complaints of human rights violations; undertake the monitoring of places of detention; examine laws which contradict human rights principles and subsequently submit those cases to the court for deliberation and ruling. The Committee is nonetheless concerned at reports that the authorities have not followed up on the findings and recommendations made by the NHRCT, and about reports that persons deprived of their liberty do not file complaints with the NHRCT when they visit detention places, reportedly out of fear of retaliation by prison officials (art. 2).

The State party should ensure that the NHRCT effectively executes its mandate in accordance with the principles relating to the status of national institutions (the Paris Principles) (General Assembly resolution 48/134, annex), in particular by strengthening the roles of the NHRCT to carry out unannounced visits to detention facilities, during which they are able to take confidential statements from detainees; implementing the recommendations made by the NHRCT and guaranteeing the independence and pluralism of its composition. In that regard, the Committee

recommends that the State party consider reviving the previous procedure for selecting commissioners to the NHRCT with a view to increasing the number of commissioners and that it allow for the participation of representatives of non-governmental human rights organizations.

Training

(26) The Committee takes note of the information, included in the State party's report and supplemented during the dialogue, about training on human rights for State officers. However, the Committee regrets that: (a) there is insufficient practical training to all professionals directly involved in the investigation and documentation of torture as well as to medical and other personnel involved with detainees and asylum seekers on the provisions of the Convention and on how to detect and document physical and psychological sequelae of torture; (b) there is a lack of training on the absolute prohibition of torture in the context of instructions issued to security personnel; and (c) there is a lack of information on the monitoring and evaluation of the impact of the training programmes in reducing incidents of torture and ill-treatment (art. 10).

The State party should:

(a) Provide mandatory training programmes to all public officials, in particular members of the police and prison staff, to ensure that they are fully aware of the provisions of the Convention, that any breach of the Convention is not tolerated, but investigated and perpetrators brought to trial;

(b) Provide specific training to all relevant personnel, including medical personnel, on how to identify signs of torture and ill-treatment, including on the use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol);

(c) Strengthen its efforts to implement a gender-sensitive approach for the training of those involved in the custody, interrogation or treatment of women subjected to any form of arrest, detention or imprisonment;

(d) Assess the effectiveness and impact of training programmes and education on the incidence of torture and ill-treatment.

Redress, including compensation and rehabilitation

(27) While noting the provisions of Section 420 of the Civil and Commercial Code and the Compensation and Expenses for Injured and Accused Persons Accused Act that victims may claim redress for human rights violations, the Committee is concerned about: (a) the absence of systematic provision by the State of rehabilitation and redress to victims for the physical and psychological consequences of torture, including appropriate medical and psychological care;, (b) the obstacles for victims of torture and ill-treatment to receive redress, including adequate compensation and rehabilitation; and (c) the insufficient information provided by the State party on redress and compensation measures, including means of rehabilitation, ordered by the courts or other State bodies and actually provided to victims of torture or their families, since the entry into force of the Convention for the State party (art. 14).

The State party should take the necessary steps to ensure that victims of torture and ill-treatment receive redress, including fair and adequate compensation and the means for as full rehabilitation as possible. The Committee draws the State party's attention to its general comment No. 3 (2012) on the implementation of article 14 by State parties, in which it elaborates on the nature and scope of State parties' obligations to provide full redress to victims of torture.

Data collection

(28) The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement and prison personnel, as well as on deaths in custody, extrajudicial executions, enforced disappearances, gender-based violence and trafficking.

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, deaths in custody, extrajudicial executions, enforced disappearances, gender-based violence and trafficking, as well as on the means of redress, including compensation and rehabilitation, provided to the victims. Such data should be submitted to the Committee when compiled.

Other issues

(29) The Committee recommends that the State party make the declarations provided for in articles 21 and 22 of the Convention in order to recognize the competence of the Committee to receive and consider communications.

(30) The State party is requested to widely disseminate the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

(31) The Committee requests the State party to provide, by 23 May 2015, follow-up information in response to the Committee's recommendations relating to: (a) ensuring or strengthening legal safeguards for detained persons; (b) conducting prompt, impartial and effective investigations of allegations of torture by law enforcement personnel; and (c) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 12, 13, 15 and 18 of the present concluding observations.

(32) The Committee invites the State party to submit its next report, which will be its second periodic report, by 23 May 2018. The Committee invites the State party to agree, by 23 May 2015, to follow the optional reporting procedure in preparing that report. Under this procedure, the Committee will transmit to the State party of a list of issues prior to the submission of the report and the State party's replies to the list of issues will constitute its next periodic report under article 19 of the Convention.

70. Uruguay

(1) The Committee against Torture considered the third periodic report of Uruguay (CAT/C/URY/3) at its 1212th and 1215th meetings (CAT/C/SR.1212 and SR.1215), held on 29 and 30 April 2014. At its 1231st and 1242nd meetings (CAT/C/SR.1231 and SR.1242), held on 12 and 20 May 2014, the Committee adopted the following concluding observations.

A. Introduction

(2) The Committee would like to thank the State party for agreeing to follow the optional reporting procedure, which makes for closer cooperation between the State party and the Committee and for a more focused consideration of the report and dialogue with the delegation. Nevertheless, the Committee finds it regrettable that the third periodic report was submitted more than 15 years late.

(3) The Committee also appreciates the frank and constructive dialogue that was held with the State party's delegation, as well as the additional information provided during its consideration of the report.

B. Positive aspects

(4) The Committee notes with satisfaction that the State party has ratified or acceded to all the core human rights instruments in force, including the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(5) The Committee welcomes the fact that the State party has taken the following legislative measures in areas related to the Convention:

(a) Promulgation of Act No. 18026 of 25 September 2006, on cooperation with the International Criminal Court in combating genocide, war crimes and crimes against humanity;

(b) Adoption of the Migration Act (Act No. 18250) of 6 January 2008 and of the Act on Refugees and the Right to Asylum (Act No. 18076) of 19 December 2006, which provided for the establishment of the Refugee Commission;

(c) Promulgation of Act No. 18446 of 24 December 2008, as amended by Act No. 18806 of 14 September 2011, which provides for the establishment of the National Human Rights Institution and Ombudsman's Office and for that body to perform additional functions as the national mechanism for the prevention of torture (art. 83);

(d) Promulgation of Act No. 18596 of 18 September 2009, which acknowledges the responsibility of the State and the right of victims to full reparation;

(e) Adoption of the National Prison System Act (Act No. 18667) of 15 July 2010, which is aimed at reducing prison overcrowding, and the Provisional and Early Release Act (Act No. 17897) of 14 September 2005;

(f) Promulgation of the Punitive Powers of the State Act (Act No. 18831) of 27 October 2011 and the adoption of Executive Resolution No. CM/323 of 30 June 2011, which repealed the Expiry of Punitive Powers of the State Act (Act No. 15848).

(6) The Committee also commends the State party on its efforts to amend its policies and procedures in order to afford greater protection for human rights and to apply the Convention and, in particular, its adoption of the first National Plan against Domestic Violence (2004–2010).

C. Principal subjects of concern and recommendations

Definition of the offence of torture

(7) Although Act No. 18026 defines torture as a specific offence, the Committee notes that the definition set out in article 22 is incomplete inasmuch as it fails to mention the purpose of the act in question or any reason for it that is based on discrimination as material elements in constituting all the circumstances associated with torture that are mentioned in paragraph 2 of that article. Nor is there any specific mention of acts of torture carried out in order to intimidate, to coerce or to obtain information or a confession from a person other than the person who was tortured (art. 1).

The State party should align article 22 of Act No. 18026 with article 1 of the Convention by specifying the objective of the offence, identifying discrimination as one of the motivating factors or reasons why torture may be inflicted and including acts intended to intimidate, coerce or obtain information or a confession from a person other than the victim in the definition. In this regard the Committee recalls its general comment No. 2 (2007), on the implementation of article 2 by States parties, which states that serious discrepancies between the Convention's definition and the definition figuring in a State party's law create actual or potential loopholes that can foster impunity (CAT/C/GC/2, para. 9).

Basic procedural guarantees

(8) Although it takes note of the explanations provided by the delegation, the Committee remains concerned at reports from non-governmental sources which indicate that Act No. 18315 of 5 July 2008, on police procedures, has extended the discretionary powers of the police during arrests, raids and house searches and in relation to the use of force (art. 2).

The Committee urges the State party to take effective steps to ensure that police officers comply with the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

The State party should also ensure that all persons deprived of their liberty have the benefit, in practice and from the very beginning of their detention, of all basic legal safeguards, including those set out in paragraphs 13 and 14 of the Committee's general comment No. 2 (2007), and in particular that detainees and persons at risk of torture and ill-treatment have judicial and other remedies available to them.

Allegations of torture and ill-treatment in prisons

(9) The Committee finds it regrettable that, notwithstanding the "dozens of criminal complaints of ill-treatment or failure to care for persons deprived of their liberty" submitted by the Parliamentary Commissioner for the Prison System (CAT/C/URY/3, para. 539), the State party has not provided precise information on the number of allegations, investigations, trials or convictions involving cases of torture or ill-treatment during the reporting period. What little information exists mentions charges of torture being brought against two warders at the Canelones prison in 2012 and a number of complaints concerning warders at various prisons for having inflicted "personal injury" upon prisoners (arts. 2, 12, 13 and 16).

The State party should:

(a) Take appropriate steps to ensure that all allegations of torture or ill-treatment are promptly, thoroughly and impartially investigated and that those responsible are tried and, if found guilty, punished in accordance with the seriousness of their acts;

(b) Ensure that investigations into allegations of torture or ill-treatment are carried out by an independent body that has the necessary resources at its disposal;

(c) Evaluate the effectiveness of the complaints mechanisms available to persons deprived of their liberty;

(d) Provide detailed information on any cases of torture or ill-treatment that occurred during the reporting period, including disaggregated information on the number of complaints, investigations, trials and judgements and on reparation granted to victims.

Prison conditions

(10) The Committee applauds the steps taken by the State party to improve prison conditions and eliminate overcrowding through an ambitious programme that includes the construction of a new prison and units in several other prisons. It is, however, concerned by the fact that two thirds of the prison population is awaiting trial and that the State party's legislation still does not set a maximum length of pretrial detention. The Committee is also concerned by reports of shortcomings in terms of medical care, the water supply, sanitation and ventilation in cells. It is also concerned by reports indicating that there is not a strict separation of accused from convicted prisoners. Moreover, the Committee notes that the

State party's prison system is still under the Ministry of the Interior, which continues to present problems with regard to the suitability of the treatment of prisoners.

The State party should adopt the necessary measures to continue improving prison conditions. In particular, it should:

(a) Ensure that the basic needs of persons deprived of their liberty are met in respect of medical care, access to drinking water and sanitation, and adequate ventilation in buildings, in accordance with the Convention and the Standard Minimum Rules for the Treatment of Prisoners, bearing in mind that the Standard Minimum Rules are currently under review;

(b) Redouble its efforts to make use of alternative measures to deprivation of liberty in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules);

(c) Set a maximum limit on the length of time that a person can be held in pretrial detention, in accordance with international standards, as part of the reform of the Code of Criminal Procedure;

(d) Ensure that different categories of prisoners are kept in separate institutions or wings based on their sex, age, criminal record, the legal reason for their detention and the type of detention concerned;

(e) Prioritize the transfer of the prison system from the Ministry of the Interior to another administrative department.

Deaths in custody

(11) The Committee finds it regrettable that the State party has not provided full statistical information on deaths of detainees during the reporting period. According to the scant data available, there were 46 deaths in the prison population between 2010 and 2012; of these deaths, 19 were a result of fires in detention centres and the remainder were caused by electrocution or violence among prisoners. The Committee takes note of the information provided by the delegation on the deaths of prisoners in the fires of 24 August 2009, at the Santiago Vázquez prison complex (COMCAR) and of 8 July 2010, at Rocha prison, according to which both the related criminal cases were shelved at the prosecution's request. The Committee also finds it regrettable that information is lacking on investigations into the deaths that occurred in custody during the reporting period and on the steps taken to prevent any recurrence of such cases.

The State party should provide comprehensive statistics on the number of persons who have died in custody during the reporting period, disaggregated by place of detention, sex, age, ethnic origin or nationality and cause of death. It should also provide detailed information on the outcome of investigations into those deaths and on steps taken to prevent any recurrence of such cases.

The Committee urges the State party to promptly undertake thorough, impartial investigations into all deaths of persons held in custody and to carry out the corresponding autopsies. The State party should also assess any possibility that prison officers or other staff might bear responsibility for such deaths and, if this proves to be the case, to punish those responsible appropriately and to provide compensation to the victims' families.

Juvenile justice

(12) The Committee is concerned about the call for a referendum on 26 October 2014 on the proposal to lower the minimum age of criminal responsibility to 16 and try young people in conflict with the law as adults in cases involving serious crimes, as a means of combating crime in the State party. The Committee is also concerned by information that it has received which indicates that the tightening of criminal legislation applicable to juvenile offenders has led to a significant increase in the number of minors deprived of their liberty and that this has resulted in a deterioration in their conditions of detention at Adolescent Criminal Responsibility System (SIRPA) facilities. Although the State party has not provided information on occupancy levels in these centres, information at the Committee's disposal indicates that there is overcrowding at the SER and Las Piedras centres in Colonia Berra and that this situation is made worse by the fact that these young people are confined to their cells for up to 23 hours a day, with no access to educational or recreational activities. Conditions of detention at the Admissions Centre for Female Adolescents (CIAF) and the Ceprili Detention Centre, in Montevideo, are also very poor, with problems with regard to the water supply and sanitation facilities being noted, in particular. The Committee is also concerned by information indicating that the adoption of more stringent measures to prevent escapes from these centres has considerably restricted inmates' opportunities for contact with the outside world (arts. 2, 11 and 16).

The State party should ensure that its juvenile justice system is fully in line with international standards, especially the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules). In particular, the Committee urges the State party to:

(a) Ensure that the minimum age of criminal responsibility is in accordance with internationally established standards;

(b) Ensure that minor offenders are deprived of their liberty only as a last resort and for the shortest amount of time possible and that their detention is reviewed periodically with a view to putting an end to it;

(c) Use alternatives to pretrial detention wherever possible;

(d) Ensure that conditions of detention in juvenile custodial centres are consistent with the Convention and other international human rights standards and that the minors in these centres receive care, protection, an education and job training;

(e) Redouble its efforts to alleviate overcrowding in juvenile detention centres.

Juvenile facilities

(13) The Committee is gravely concerned by reports of ill-treatment of minors in SIRPA facilities. According to the information submitted, there are documented cases of ill-treatment in the form of beatings, the use of stress positions such as the "*paquetito*" or "package" (shackling hands and feet behind the back), abusive or humiliating punishments, including forced nudity, collective punishments, strip searches, invasive body searches and the use of coercive measures within these facilities. While welcoming the additional information provided by the delegation, according to which SIRPA has opened 16 files on cases of ill-treatment, sexual abuse and irregularities in restraint procedures since 2012, and criminal complaints have been brought in 3 cases arising in the SER centre, the Committee finds it regrettable that the information does not include the number of alleged victims or their sex and age, the place of detention concerned or the protective measures taken in each case. Notwithstanding the delegation's statement in which it categorically denied all

allegations that psychopharmaceutical substances are administered as a means of restraint, the Committee remains concerned by reports indicating that there are irregularities in this regard, particularly in respect of female juvenile detainees. Lastly, the Committee is concerned by reports that reprisals have been taken against victims, their families and officials in these centres who have reported ill-treatment of this kind (arts. 2, 12, 13 and 16).

The Committee urges the State party to:

(a) Set up an effective, independent and accessible complaints mechanism that will ensure that reports of torture or ill-treatment of minors held in SIRPA centres are investigated promptly, thoroughly and impartially. Such investigations should be carried out by an independent agency;

(b) Investigate the alleged irregularities in the administration of medicines to juvenile detainees;

(c) Ensure that, in cases of alleged torture or ill-treatment, suspects are immediately suspended from duty for the duration of the investigation, particularly if there is a risk that those actions might be repeated or the investigation obstructed;

(d) Protect victims and witnesses of torture or ill-treatment from reprisals;

(e) Provide victims of torture and ill-treatment with redress, including just and adequate compensation and the fullest possible rehabilitation, taking due account of the Committee's general comment No. 3 (2012) on the implementation of article 14 by States parties (CAT/C/GC/3).

Monitoring and inspection of places of detention

(14) The Committee is concerned by the fact that the national mechanism for the prevention of torture does not have a budget of its own and lacks all the resources it would need to perform its work in a fully satisfactory manner. The Committee attaches importance to the mechanism's active presence in juvenile custodial facilities, but is of the view that the need for it to coordinate its activities with other inspection agencies, such as the Parliamentary Commissioner for the Prison System or the Office of the Inspector General for Psychopathic Patients, cannot be allowed to act as an obstacle to the full performance of its duty to monitor all places where people are deprived of their liberty (art. 2).

The State party should ensure the national preventive mechanism's functional independence by assigning it a budget of its own and specialized medical and legal staff so that it can cover all places where people are deprived of their liberty in accordance with the Optional Protocol to the Convention and the guidelines on national preventive mechanisms (CAT/OP/12/5, paras. 20, 32 and 39).

The State party should also take the necessary steps to support the work of the national mechanism for the prevention of torture by ensuring that its recommendations are fully applied.

The National Human Rights Institution and Ombudsman's Office

(15) The Committee notes with concern that, although the State party considers that the budget of the National Human Rights Institution and Ombudsman's Office "is sufficient to ensure the Institution's independent operation and covers the necessary infrastructure and staffing" (CAT/C/URY/3, para. 85), the National Human Rights Institution states in its report to the Committee that there are budget-related difficulties and that there is a need for "an adequate legal-administrative framework and more budgetary and operational autonomy [to ensure] greater independence and effectiveness" (paras. 36–38) (art. 2).

The State party should:

(a) Ensure that the National Human Rights Institution has the independence, budget, infrastructure and the resources of its own that it needs to fully execute its mandate in accordance with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (Paris Principles);

(b) Urge the National Human Rights Institution to apply for accreditation with the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

Efforts to combat impunity and to provide redress for serious human rights violations committed during the dictatorship

(16) The Committee recognizes the efforts of the State party to address impunity and to provide redress to the victims of past human rights violations (committed in 1973–1985) (see paragraphs 5 (c) and (d) above). However, the Committee is in disagreement with Supreme Court Decision No. 20 of 22 February 2013, in which the Court found that articles 2 and 3 of the Punitive Powers of the State Act (Act No. 18831) were unconstitutional. While it is understood that the scope of the finding of unconstitutionality is confined to the specific case in which this issue was raised, the Committee is of the view that the Supreme Court's refusal to allow the retroactive application of the provision whereby crimes against humanity are not subject to a statute of limitations runs counter to international human rights law (arts. 1, 4, 12, 13, 14 and 16).

The State party should continue to work to ensure that crimes against humanity, including acts of torture and enforced disappearance, are not subject to any statute of limitations, amnesty or immunity. In that respect, the Committee refers to its general comment No. 2 (2007), which states that: "amnesties or other impediments which preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability", and its general comment No. 3 (2012), which states that: "amnesties for the crime of torture are incompatible with the obligations of States parties under the Convention, including under article 14. […] The Committee considers that amnesties for torture and ill-treatment pose impermissible obstacles to a victim in his or her efforts to obtain redress and contribute to a climate of impunity. The Committee therefore calls on States parties to remove any amnesties for torture or ill-treatment."

Independence of the judiciary

(17) The Committee is concerned by the transfer, pursuant to a Supreme Court order which did not state the reasons on which it was based, of Judge Mariana Mota from the Seventh Criminal Court of Montevideo to the First Civil Court on 15 February 2013. It notes that, until that time, Judge Mota had been presiding over investigations that had been opened in connection with numerous cases of crimes against humanity committed in 1973–1985. According to information supplied by the delegation, the transfer has been challenged and the case is under investigation in the administrative courts (art. 2).

The State party should adopt effective measures to ensure the full independence and impartiality of judges and prosecutors by ensuring, inter alia, that the laws and regulations that govern such officials' appointment, security of tenure and the manner in which they may be removed from the bench are in conformity with international standards, particularly the Basic Principles on the Independence of the Judiciary (which were ratified by the General Assembly by its resolution 40/32 of 29 November 1985 and by its resolution 40/146 of 13 December 1985).

The Committee recommends that the State party call the attention of the Supreme Court to the fact that a competent, independent and impartial judiciary that acts in accordance with the Bangalore Principles of Judicial Conduct (E/CN.4/2003/65, annex) plays an important role in protecting human rights.

Refugees and training courses

(18) Bearing in mind the State party's efforts to equip itself with a new legal framework in respect of migration and asylum, the Committee is concerned by reports indicating that, despite the provisions of Act No. 18076, women, unaccompanied minors or minors who have become separated from their families, and victims of torture or traumatization who request asylum in the State party do not receive treatment that is in accordance with their specific needs during the refugee-status application process (arts. 3, 10 and 16).

The State party should ensure that it is in full compliance with its obligations in respect of non-refoulement under article 3 of the Convention. In particular, the Committee recommends that the State party:

(a) Strengthen its ongoing training programmes on the protection of refugees and national asylum laws for immigration officers and border guards;

(b) Uphold the principle that asylum procedures should remain confidential and should provide for special consideration for women, minors, victims of torture or traumatization and other asylum seekers with specific needs.

Abuses committed by peacekeepers

(19) The Committee takes note of the recent conviction at first instance of four marines from the military contingent sent by Uruguay to serve in the United Nations Stabilization Mission in Haiti (MINUSTAH) for the assault of a young Haitian man who reported that he had been sexually abused in 2011 at a military base in Port Salut, Haiti. According to information supplied by the delegation, the perpetrators of these acts have been discharged from the Navy, and the judgement, which fixed a sentence of imprisonment of 2 years and 1 month, was appealed in March 2014 and is still under review (arts. 1, 2, 4, 5, 12 and 16).

The Committee urges the State party to ensure that those responsible for such acts are punished in accordance with the seriousness of their acts, and ensure that victims receive redress, including just and adequate compensation, and as complete a rehabilitation as possible, in accordance with the Committee's general comment No. 3 (2012). The State party should also take steps to prevent a repetition of this type of abuse in peacekeeping operations, including the provision of specific training on sexual abuse.

Violence against women

(20) The Committee acknowledges the State party's efforts to prevent and combat gender-based violence and underlines the importance of the legislative, administrative and other measures adopted during the reporting period, as well as the collaboration with civil society in that regard. Nevertheless, and in spite of the foregoing, the Committee is concerned by the prevalence of gender-based violence, and particularly domestic violence, in Uruguay, where 132,206 complaints were filed in respect of this offence between 2005 and 2013, with 26,086 of those complaints being lodged in 2013. While taking note of the ample information supplied by the State regarding the measures adopted to combat domestic violence, the Committee finds it regrettable that so little official data are available on the various forms of violence against women and that statistics are lacking on investigations, trials, judgements and the sentences handed down to guilty parties and on the redress granted to victims during the reporting period (arts. 1, 2, 4, 14 and 16).

The Committee urges the State party to strengthen its efforts to combat violence against women, ensuring that all cases of violence against women are thoroughly investigated, that the alleged perpetrators are put on trial and, if convicted, given an appropriate sentence and that victims receive redress, including just and adequate compensation. In this regard, the Committee draws attention to paragraph 33 of its general comment No. 3 (2012). The Committee also recommends that public awareness-raising campaigns on all forms of violence against women should be broadened.

Violent deaths of transsexual women

(21) The Committee strongly condemns the killings of transsexual women that have occurred in the country. The available information indicates that only one of the six cases of killings of this type that have occurred in the past two years has been resolved (arts. 1, 2, 4, 12 and 16).

The State party should take steps, as a matter of urgency, to put an end to the selective killing of persons because of their sexual orientation or their gender identity. The Committee therefore also urges the State party to:

(a) Protect people from homophobic and transphobic violence and from cruel, inhuman and degrading treatment;

(b) Adopt the legislative measures concerning hate crimes that are necessary to deter violence directed at people because of their sexual orientation or gender identity and establish effective systems for reporting this type of violence so that the perpetrators of such acts can be investigated, put on trial and punished;

(c) Provide targeted training to police officers and other law enforcement officials regarding violence directed at people because of their sexual orientation or gender identity.

Human trafficking

(22) The Committee takes note of the information supplied by the State party on trafficking in persons for purposes of sexual exploitation and forced labour, and appreciates the State's efforts to prevent and combat this phenomenon. The scant information available on the subject, however, is limited to the number of trials and convictions and the sentences handed down to guilty parties between 2012 and 2013 (arts. 1, 2, 4, 12 and 16).

The State party should:

(a) Redouble its efforts to prevent and combat human trafficking;

(b) Undertake prompt, impartial investigations into cases of human trafficking, ensure that those found guilty of such offences are punished and ensure that all victims of such acts obtain redress.

Training

(23) The Committee appreciates the State party's efforts to provide training but finds it regrettable that it has not received any information on how effective the training programmes for law enforcement officials have been in reducing the number of cases of torture and ill-treatment. The Committee also takes note of the cooperation that takes place between the Ministry of the Interior, the Parliamentary Commissioner for the Prison System and the Department of Forensic Medicine of the Faculty of Medicine of the University of the Republic in developing courses for medical and health-care staff of the prison system on the use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) (art. 10).

The State party should:

(a) Continue to develop mandatory training programmes in order to ensure that all civil servants are fully familiar with the provisions of the Convention and are fully aware that breaches will not be tolerated, that they will be investigated and that those responsible will be prosecuted;

(b) Expand its targeted training programmes on the Istanbul Protocol to include judges, prosecutors, forensic physicians and all medical personnel who deal with persons in detention;

(c) Continue to develop a methodology for evaluating the effectiveness of training and instructional programmes in reducing the number of cases of torture and ill-treatment.

(24) The State party is invited to disseminate its report to the Committee and these concluding observations widely in all appropriate languages through official websites, the media and non-governmental organizations.

(25) The Committee requests the State party to furnish it with information by 23 May 2015, at the latest, on the action that it has taken in response to the recommendations in paragraphs 9, 12 and 13 of these concluding observations that it: (a) ensure or reinforce safeguards for persons who have been deprived of their liberty; (b) undertake prompt, impartial and effective investigations; (c) prosecute suspected perpetrators and punish those found guilty of having committed torture or ill-treatment.

(26) The Committee invites the State party to submit its fourth periodic report by 23 May 2018, at the latest. To that end, and in view of the fact that the State party has agreed to report to the Committee under the optional reporting procedure, the Committee will submit a list of issues prior to reporting to the State party in due course.

IV. Follow-up to concluding observations on States parties' reports

71. In the present chapter, the Committee discusses its follow-up procedure under article 19 of the Convention, and the findings and views of the rapporteur on follow-up established by the Committee. Additional detailed information, including submissions by States parties and replies under the follow-up procedure, is posted on the website of the Committee against Torture at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/FollowUp.aspx?Treaty=CAT&Lang=en.

72. In May 2003, the Committee developed a procedure to provide for follow-up subsequent to the adoption of the concluding observations on reports of States parties under article 19 of the Convention. In accordance with its rules of procedure, the Committee established the post of Rapporteur for follow-up to concluding observations and appointed Felice Gaer to that position, extending the appointment every two years thereafter until May 2014, when Ms. Gaer requested that another Committee member be appointed. The Committee has presented information in each of its annual reports thereafter, outlining its experience in receiving information on follow-up measures taken by States parties, including substantive trends and further modifications it has made in the procedure.

73. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific measures to prevent acts of torture and/or ill-treatment. In those concluding observations, the Committee advises States parties as to its views on effective legislative, judicial, administrative and other measures to bring their laws and practice into compliance with the obligations of the Convention.

74. In its follow-up procedure, the Committee requests each State party reviewed under article 19 to provide, within one year, information on the measures taken to give effect to a number of its recommendations. Such follow-up requests are presented in a paragraph near the end of the concluding observations. The recommendations for such follow-up are so identified because they meet three criteria: they are serious, they are protective and they can be accomplished within one year. Through this procedure, the Committee seeks to promote the fulfilment of the requirement under the Convention that each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture (art. 2, para. 1) and the undertaking by States parties to prevent other acts of cruel, inhuman and degrading treatment or punishment (art. 16).

75. The Rapporteur for follow-up to concluding observations under article 19 of the Convention is responsible for evaluating follow-up reports as they are received from States parties (and, where necessary, once they have been translated by the United Nations translation services). The Rapporteur assesses the reports, taking into account the information contained therein, as well as other information. When the Rapporteur deems it appropriate, a "request for clarification" letter is prepared, in which, on behalf of the Committee, the Rapporteur (a) inquires about the recommendations designated for follow-up in the Committee's concluding observations but that the State party has, in its report, failed to address or has only partially addressed; (b) requests more detail regarding matters addressed in the State party's report to enable her to assess the extent to which the State party has implemented the relevant recommendation; and/or (c) brings to the State party's attention information received about developments since the conclusion of the Committee's review of the State party that are relevant to one or more of the follow-up recommendations and requests the State party's comment thereon. In this process, as specified in the Committee's rules of procedure, the rapporteur for follow-up consults with the Committee members who served as country rapporteurs during the consideration of the report of the State party.

76. In November 2011, the Committee discussed a detailed analysis, presented by the rapporteur for follow-up to concluding observations, of the Committee's experience with the follow-up procedure. It noted, in particular, the large and growing number of items that were being identified for follow-up in its concluding observations.

77. The most frequently addressed topics identified for follow-up were found to have been have been recommendations to States parties to: (a) conduct prompt, impartial and effective investigations; (b) prosecute and sanction perpetrators of torture or ill-treatment; (c) ensure or strengthen legal safeguards for persons detained; (d) ensure the right to complain and have cases examined; (e) conduct training and awareness-raising; (f) bring interrogation techniques into line with the Convention and, specifically, abolish incommunicado detention; (g) ensure redress and rehabilitation; (h) prevent gender-based violence and ensure the protection of women; (i) monitor detention facilities and places of confinement and facilitate unannounced visits by an independent body; (j) improve data collection on torture; and (k) improve conditions of detention, such as overcrowding.

78. After discussing the analysis by the Rapporteur, the Committee adopted a new framework aimed at focusing the procedure. The Committee decided:

(a) To maintain the three criteria of (i) seriousness, (ii) protectiveness and (iii) the ability to be implemented within a year;

(b) As a general matter, to designate for the follow-up procedure recommendations relating to one of three themes: (i) ensuring or strengthening the legal safeguards for persons deprived of their liberty; (ii) conducting prompt, impartial and effective investigations; or (iii) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment. Furthermore, when deemed necessary, the State party may be asked to include information on how it provides remedies and redress to victims of violations of the Convention, or to address other issues;

(c) To add a standard paragraph to its concluding observations outlining these criteria and themes and identifying the particular recommendations selected for the follow-up procedure;

(d) To limit to four the number of recommendations designated for follow-up, whenever possible.

79. In May 2014, in her oral report to the Committee, Ms. Gaer described the notable achievements of the follow-up procedure and identified enduring challenges for the Committee to consider addressing at its next session, in the context of an anticipated review of its working methods prompted by the adoption by the General Assembly of resolution 68/268 on strengthening and enhancing the effective functioning of the human rights treaty bodies. Additionally, pointing to the 10 years she had worked on the follow-up procedure, Ms. Gaer proposed that the Committee appoint another member to the post of Rapporteur for follow-up to concluding observations. The Chairman thanked Ms. Gaer for her years of service and achievements in the post, noting the extensive research and related efforts that had been required during that period, as well as the ongoing evaluation and assessment of follow-up trends she had presented to the Committee members in efforts to refine the effectiveness of the procedure.

Achievements of the follow-up procedure

80. In May 2014, Ms. Gaer reported her conclusion that the Committee's follow-up procedure had been instrumental in maintaining and intensifying both the assessment of implementation of the requirements of the Convention and direct contact between the Committee and States parties following adoption of concluding observations on the report of a State party and before that State party's submission of its next periodic report. The

follow-up procedure allows the Committee to continue to receive information from the State party during the interim period. It also provides the Committee with an opportunity to comment on measures taken by the State party and to request additional information and clarification from the State party on its efforts where necessary. To the extent that it allows the Committee to provide an assessment of the State party's efforts at implementation more promptly than it can under the regular reporting procedure, the follow-up procedure enhances the Committee's effectiveness.

81. Since May 2003, through the end of the fifty-second session in May 2014, the Committee has issued 159 sets of concluding observations for States parties in which it has identified follow-up recommendations. Of the 134 follow-up reports that were due by 23 May 2014, when the present report was adopted, 97 had been received by the Committee, for a 72 per cent overall response rate. Ms. Gaer reported those figures to the Committee in May 2014, noting that it was a good response rate.

82. As at 23 May 2014, the following States had not yet supplied follow-up information that had fallen due: Albania (forty-eighth session), Benin (thirty-ninth), Bulgaria (thirty-second), Burundi (thirty-seventh), Cambodia (thirty-first and forty-fifth), Cameroon (thirty-first and forty-fourth), Chad (forty-second), Costa Rica (fortieth), Cuba (forty-eighth), the Democratic Republic of the Congo (thirty-fifth), Djibouti (forty-seventh), Ecuador (forty-fifth), El Salvador (forty-third), Ethiopia (forty-fifth), Gabon (forty-ninth), Ghana (forty-sixth), Honduras (forty-second), Indonesia (fortieth), Jordan (forty-fourth), Kuwait (forty-sixth), Luxembourg (thirty-eighth), Madagascar (forty-seventh), Mauritius (forty-sixth), Mongolia (forty-fifth), Nicaragua (forty-second), Peru (thirty-sixth), the Republic of Moldova (thirtieth), Rwanda (forty-eighth), South Africa (thirty-seventh), the Syrian Arab Republic (forty-eighth), Tajikistan (thirty-seventh), Togo (thirty-sixth), Uganda (thirty-fourth), Yemen (forty-fourth) and Zambia (fortieth).

83. Between 1 June 2013 and 23 May 2014, follow-up replies were received from 17 State parties, namely: Armenia (CAT/C/ARM/CO/3/Add.1), Belarus (CAT/C/BLR/CO/4/Add.3), Canada (CAT/C/CAN/CO/6/Add.1), the Czech Republic (CAT/C/CZE/CO/4-5/Add.1), Germany (CAT/C/DEU/CO/5/Add.3), Greece (CAT/C/GRC/CO/5-6/Add.1), Ireland (CAT/C/IRL/CO/1/Add.2), Mexico (CAT/C/MEX/CO/5-6/Add.1), Norway (CAT/C/NOR/CO/6-7/Add.1), Paraguay (CAT/C/PRY/CO/4-6/Add.2), Peru (CAT/C/PER/CO/5-6/Add.1), Qatar (CAT/C/QAT/CO/2/Add.1), the Russian Federation (CAT/C/RUS/CO/5/Add.1), Senegal (CAT/C/SEN/CO/3/Add.1), Tajikistan (CAT/C/TJK/CO/2/Add.1), Togo (CAT/C/TGO/CO/2/Add.1) and Uzbekistan (CAT/C/UZB/CO/4/Add.1).[7]

84. During her progress report to the Committee, the Rapporteur expressed appreciation for the information provided by those State parties regarding the follow-up procedure. She had assessed the responses received as to whether all the items designated by the Committee for follow-up had been addressed, and whether the information provided responded to the Committee's concern. When deemed necessary, she had written to State parties requesting further clarification; for example, between 1 June 2013 and 23 May 2014, such communications had been sent to Germany (letter dated 11 June 2013), Belarus (3 July 2014), Peru (23 April 2014) and Turkmenistan (23 May 2014). To date, 27 State parties had provided additional clarifications in response to her requests for additional information. Where follow-up information was not supplied at all, the Rapporteur requested the outstanding information.

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[7] Follow-up replies are available from the Committee's webpage for follow-up: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/FollowUp.aspx?Treaty=CAT&Lang=en.

85. During the period under review, the Rapporteur had also sent reminders to Albania (dated 3 June 2013), Armenia (3 June 2013),[8] Cuba (3 June 2013), the Czech Republic (3 June 2013),[9] Greece (3 June 2013)[10] and Rwanda (3 June 2013).

86. *Syrian Arab Republic*. In view of the special report requested by the Committee from the Syrian Arab Republic, and the absence of a response, the Committee had sent a second reminder to that State party (dated 22 January 2014). In that reminder, the Rapporteur had noted with deep concern the latest findings of the independent international commission of inquiry on the Syrian Arab Republic that torture remained widespread, and had cited the commission's concerns that the Government had employed systematic torture to interrogate, intimidate and punish its perceived opponents. Although the Rapporteur had requested an urgent meeting with the representative of the State party, there had been no response to the communication.

87. *Non-governmental sources of information*. The Rapporteur also expressed her appreciation for the information submitted by human rights NGOs and other civil society groups under the follow-up procedure, including documentation on nine State parties: Belarus, Belgium, Mexico, Morocco, Peru, Senegal, Spain, Tajikistan and Togo.

Obtaining precise information to strengthen the follow-up procedure

88. In her correspondence with States parties, the Rapporteur had noted recurring concerns which were not fully addressed in the follow-up replies. She had found there was considerable value in having precise information provided in the follow-up procedure, for example, lists of prisoners and details on deaths in detention and forensic investigations. As she departed from the Rapporteur post, she wished to recall the following needs, considerations and challenges, which remained illustrative of the aspects that should be recognized and/or addressed as part of good practices:

(a) The need for greater precision on the means by which police and other personnel instruct on, and guarantee, the right of detainees to obtain prompt access to an independent doctor, a lawyer and a family member;

(b) The importance of providing specific case examples regarding such access and regarding the implementation of other follow-up recommendations;

(c) The need for separate, independent and impartial bodies to examine complaints of torture and ill-treatment, because the Committee has repeatedly noted that the victims of such abuse are unlikely to turn to the very authorities of the system allegedly responsible for such acts;

(d) The value of providing precise information such as lists of prisoners, which are good examples of transparency, but which often reveal a need for more rigorous fact-finding and monitoring of the treatment of persons facing possible infringement of the Convention;

(e) The numerous ongoing challenges in gathering, aggregating and analysing police and administration-of-justice-sector statistics in ways that ensure adequate information on the personnel, agencies or specific facilities responsible for alleged abuses;

(f) The protective value of prompt and impartial investigations into allegations of abuse and, in particular, information about effective institutions, such as parliamentary or national human rights institutions, national preventive mechanisms or ombudspersons, as investigators, especially for monitoring activities, including unannounced visits, as well as the utility of permitting non-governmental organizations to conduct prison visits;

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[8] Armenia provided follow-up information on 11 July 2013 (CAT/C/ARM/CO/3/Add.1).

[9] The Czech Republic provided follow-up information on 20 June 2013 (CAT/C/CZE/CO/4-5/Add.1).

[10] Greece provided follow-up information on 5 June 2013 (CAT/C/GRC/CO/5-6/Add.1).

(g) The need for information about specific professional police training programmes with clear-cut instructions as to the prohibition against torture and practice in identifying the sequelae of torture;

(h) The need to address lacunae in statistics and other information regarding offences, charges and convictions, including any complaints of police misconduct and any specific disciplinary sanctions against officers and other relevant personnel, as well as the absence or inadequacy of data regarding, inter alia, fair and adequate compensation and rehabilitation measures for victims of torture, including victims of sexual violence and abuse, the intersection of race and/or ethnicity with ill-treatment and torture, the use of "diplomatic assurances" for persons being returned to another country to face criminal charges and complaints about abuses within the military.

Sequencing the follow-up procedure with the simplified reporting procedure

89. The Rapporteur for follow-up to concluding observations noted that there was a need to consider the relationship of the follow-up procedure to the Committee's optional reporting procedure, which was based on lists of issues prior to reporting (see para. 37 above), which it offered to States parties beginning at its thirty-eighth session (May 2007). While the adoption of the procedure had had a positive impact on the timeliness of the submission by States of their periodic reports and the Committee's review of them, it had also posed some challenges for the Committee, specifically regarding the sequencing of the follow-up procedure and the optional reporting procedure.

90. After the Committee established its optional reporting procedure, the Rapporteur had pointed out that lists of issues prior to reporting did not always include items designated for follow-up or the information presented by States parties in exchanges with the Rapporteur. However, in 2011 she had reported that that had changed following her reports and her discussions with the Committee members. The Committee had become more attentive to incorporating into the lists of issues prior to reporting outstanding issues relating to items previously designated for follow-up, although she noted that greater efforts could still be made in that regard.

91. However, the Rapporteur considered that the sequencing of the follow-up procedure and the optional reporting procedure continued to pose a challenge for the Committee. As a rule, lists of issues prior to reporting were to be submitted to States parties accepting the optional reporting procedure at least one year in advance of the due date of the State party's report (CAT/C/47/2, para. 4). That narrowed the gap between communications from the Committee to States parties from four years to three years.

92. In practice, however, there had been many occasions since 2007 in which the Committee had adopted lists of issues two years in advance of the due date of the State party's report.[11] In the view of the Rapporteur, the practice of early adoption of a list of issues prior to reporting had problematic implications for the follow-up procedure, because it did not always allow for the list of issues prior to reporting to take into account or adequately reflect the information transmitted during the follow-up process. It also created challenges for the reporting process more broadly, as the questions posed by the Committee in its list of issues prior to reporting might be out of date if the State party to which the

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[11] See CAT/C/47/2, paragraph 15, noting that in 2010 the Committee adopted, and transmitted, lists of issues prior to reporting for 36 States parties with reports due in 2012.

questions were directed was not reviewed by the Committee for three or more years after the adoption of the list of issues prior to reporting.

93. In addition, although the Rapporteur for follow-up to concluding observations sought to review all follow-up reports submitted by States parties to the Convention in a timely manner, at times that was impossible due to a delay between the receipt of follow-up reports and their translation by the United Nations translation services.

94. Both of those factors — the delayed processing of follow-up reports and the early adoption of lists of issues prior to reporting — could contribute to a situation in which States parties received multiple communications from the Committee (that is, a request-for-clarification letter and a list of issues prior to reporting) within the same calendar year. It had been the Committee's experience that such practice could have the effect of creating confusion for States parties that were genuinely endeavouring to comply with their reporting obligations. However, to date, the Committee had not developed a procedure for updating lists of issues prior to reporting to which States parties had not responded in the requested time period.

95. The Rapporteur suggested that the Committee could address this sequencing challenge in several ways, including by increasing efforts to ensure that all lists of issues prior to reporting dispatched to States that had accepted the optional reporting procedure adequately reflected the matters addressed in the State party's report on follow-up to the concluding observations and in the Rapporteur's requests for clarification.

96. In order to strengthen the follow-up procedure and to reflect the findings and concerns raised during the course of such follow-up, the Rapporteur also encouraged the Committee to develop a format for updating out-of-date lists of issues prior to reporting, for example, whenever a State party's report had not been submitted by two years after it received the list of issues prior to reporting.

97. More generally, the Rapporteur considered it important for the Committee to refrain from adopting and disseminating lists of issues prior to reporting to States parties more than one year in advance of the due date of the State party's report.

98. The Rapporteur also encouraged the consideration of in-country follow-up visits by a team consisting of the Rapporteur for follow-up to concluding observations, the country co-rapporteurs and a member of the secretariat, as discussed at the fifty-second session of the Committee. Her proposal to consider the development of a fixed questionnaire for follow-up, and the possibility of in-country visits, evoked considerable interest among Committee members during those discussions.

99. The Rapporteur also discussed with the Committee the importance of continuing to assess both the procedural and substantive compliance of States with the follow-up procedure.

V. Activities of the Committee under article 20 of the Convention

A. General information

100. In accordance with article 20, paragraph 1, of the Convention, if the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State party, the Committee shall invite that State party to cooperate in the examination of the information and, to that end, to submit observations with regard to the information concerned.

101. In accordance with rule 75 of the Committee's rules of procedure, the Secretary-General shall bring to the attention of the Committee information which is, or appears to be, submitted for the Committee's consideration under article 20, paragraph 1, of the Convention.

102. No information shall be received by the Committee if it concerns a State party which, in accordance with article 28, paragraph 1, of the Convention, declared at the time of ratification of or accession to the Convention that it did not recognize the competence of the Committee provided for in article 20, unless that State party has subsequently withdrawn its reservation in accordance with article 28, paragraph 2, of the Convention.

103. The Committee's work under article 20 of the Convention continued during the period under review. In accordance with the provisions of article 20 and rules 78 and 79 of the Committee's rules of procedure, all documents and proceedings of the Committee relating to its functions under article 20 of the Convention are confidential and all the meetings concerning its proceedings under that article are closed. However, in accordance with article 20, paragraph 5, of the Convention, the Committee may, after consultations with the State party concerned, decide to include a summary account of the results of the proceedings in its annual report to the States parties and to the General Assembly.

104. In the framework of the Committee's follow-up activities, the rapporteurs on article 20 continued to carry out activities aimed at encouraging States parties on which enquiries had been conducted and the results of such enquiries had been published, to take measures to implement the Committee's recommendations.

105. Further information on the procedure is available on the OHCHR website (www.ohchr.org/EN/HRBodies/CAT/Pages/InquiryProcedure.aspx).

B. Proceedings concerning the confidential inquiry on Lebanon

1. Introduction

106. Lebanon acceded to the Convention on 5 October 2000. At the time of accession the State party did not declare that it did not recognize the competence of the Committee against Torture provided for in article 20 of the Convention, as it could have under article 28 of the Convention. The inquiry procedure is, therefore, applicable to Lebanon.

2. Development of the procedure

107. On 28 October 2008, Alkarama for Human Rights (hereinafter, Alkarama), a non-governmental organization, submitted a communication and supporting documentation to the Committee containing allegations of systematic use of torture, in particular related to the Nahr al-Bared crisis in north Lebanon in mid-2007, and requested the Committee to

examine the situation in Lebanon under article 20 of the Convention. It further submitted additional reports and supplementary materials.

108. During its forty-fifth session, in November 2010, the Committee designated two of its members, Felice Gaer and Fernando Mariño Menéndez, to make a preliminary examination of the information in preparation for further discussion by the Committee at its subsequent session. The Committee examined the information in private meetings during its forty-sixth session, in May and June 2011. It appeared to the Committee that the information submitted to it under article 20 of the Convention was reliable and that it contained well-founded indications that torture was being systematically practised in the territory of Lebanon. In accordance with article 20, paragraph 1, of the Convention and rule 82 of its rules of procedure (CAT/C/3/Rev.5), the Committee decided to invite the State party to cooperate in the examination of the information and to submit observations in that regard. On 8 June 2011, the Chairperson of the Committee sent a letter to the Government of Lebanon reflecting that decision.

109. The responses provided by the Government of Lebanon on 4 August 2011 were considered by the Committee in closed meetings on 16 and 24 November 2011. Following their examination, the Committee found that the responses were not satisfactory and decided, at its forty-eighth session, to undertake a confidential inquiry in accordance with article 20, paragraph 2, of the Convention and rule 84 of its rules of procedure. For that purpose, the Committee designated three of its members, Essadia Belmir, Mr. Mariño Menéndez and Nora Sveaass. It also decided to invite the State party, in accordance with article 20, paragraph 3, of the Convention and rule 85 of its rules of procedure, to cooperate with the Committee in the conduct of the inquiry. Lastly, it decided to request the State party, pursuant to article 20, paragraph 3, of the Convention and rule 86 of its rules of procedure, to agree to a visit by the Committee between 21 January and 1 February 2013, in which a medical doctor would also participate.

110. On 14 November 2012 the State party requested the postponement of the visit as the dates proposed by the Committee did not allow enough time for it to prepare adequately. By note verbale, dated 14 December 2012, the State party informed the Committee that it accepted the Committee's request to visit and agreed that the visit could take place in April 2013.

3. Facilitation of the visit and cooperation

111. The Committee requested the cooperation of the State party in the conduct of the visit, in accordance with the following main principles: (a) freedom of movement; (b) unlimited access to all places where persons are or may be deprived of liberty; (c) full information about those places; (d) free contact with all authorities; (e) private contacts with NGOs and any other private persons; (f) full access to all documents; (g) assurances of non-reprisal; (h) appropriate security arrangements; and (i) immunity for all mission members.

112. The Committee appreciated the cooperation extended by the authorities prior to and during the visit, and thanked the Government for issuing letters of authorization providing the members of the delegation with unrestricted access to all detention facilities. The Committee noted, however, that it had not received the authorizations in advance and in the agreed format, as requested prior to the visit. The Committee took the opportunity to thank the General Prosecutor for authorizing visits to detention centres beyond working hours and at weekends. Nevertheless, it noted that it had not received a complete list of all places where persons might be deprived of their liberty. During the visit, the delegation was able to move freely and collect information relevant to the inquiry from a wide range of sources. It enjoyed unannounced and unimpeded access to places of detention, held private interviews with detainees and had access to documentation. The delegation had some

difficulty in gaining access to certain places of detention, such as the courthouse holding facilities in Tripoli and Beirut. Those difficulties were generally overcome thanks to the cooperation of the governmental focal points. Regrettably, the delegation was not allowed to consult the custody registers at the military intelligence detention facilities in Saida (South Region Command) nor at the Internal Security Forces Information Branch facilities in Tripoli (North Region Command).

4. Reprisals

113. Prior to the visit, the Committee received allegations of reprisal against Saadeddine Shatila, a representative of Alkarama in Lebanon. On 10 November 2011, the Committee transmitted an allegation letter to the Government, as Mr. Shatila was reportedly at risk of reprisals by members of the military intelligence services and the military police following the submission of information to the Committee by that NGO under the inquiry procedure. Such reprisals against Mr. Shatila and Alkarama would constitute a violation of article 13 of the Convention by the Lebanese authorities. On 5 March 2012 Alkarama informed the Committee that the investigative judge of the Military Court had issued a decision closing the investigation against Mr. Shatila, which was subsequently confirmed by the judge in the case. Further to the conclusion of the confidential inquiry proceedings, the Committee decided to make public the Chairperson's allegation letter to the State party on the matter.[12]

5. Publication of the inquiry report and summary account of the results of the proceedings

114. During its fifty-first session, the Committee adopted its report on Lebanon under article 20 of the Convention and, in accordance with paragraph 4 of the same article, decided to transmit the findings of the inquiry to the State party and invite it to inform the Committee, by 29 January 2014, of the measures taken with regard to those findings and in response to its recommendations. On 29 January 2014, the State party submitted its comments and observations on the Committee's report. In its communication, Lebanon indicated that it did not consent to the publication of the inquiry report.

115. On 22 May 2014, the Chairperson of the Committee met with the Permanent Representative of Lebanon to the United Nations Office in Geneva to discuss further the publication of the inquiry report along with the Government's comments and observations on the report. In view of the State party's reiterated opposition to the publication of the full report, the Committee decided, pursuant to article 20, paragraph 5, of the Convention, to include in its annual report to the General Assembly a summary account of the results of the proceedings (see annex XIII).

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[12] Available from www.ohchr.org/EN/HRBodies/CAT/Pages/ReprisalLetters.aspx.

VI. Consideration of complaints under article 22 of the Convention

A. Introduction

116. Under article 22 of the Convention, individuals who claim to be victims of a violation by a State party of the provisions of the Convention may submit a complaint to the Committee against Torture for consideration, subject to the conditions laid down in that article. Sixty-six States that have acceded to or ratified the Convention have declared that they recognize the competence of the Committee to receive and consider complaints under article 22 of the Convention. The list of those States is contained in annex III. No complaint may be considered by the Committee if it concerns a State party to the Convention that has not recognized the Committee's competence under article 22.

117. In accordance with rule 104, paragraph 1, of its rules of procedure, the Committee established the post of Rapporteur on new complaints and interim measures. The post, which was held by Mr. Mariño Menéndez until 31 December 2013, and by Ms. Belmir from 1 January 2014 to 23 May 2014, is currently held by Mr. Domah.

118. Consideration of complaints under article 22 of the Convention takes place in closed meetings (art. 22, para. 6). All documents relating to the work of the Committee under article 22, i.e. submissions from the parties and other working documents of the Committee, are confidential. Rules 113 and 115 of the Committee's rules of procedure set out the modalities of the complaints procedure.

119. The Committee decides on a complaint in the light of all information made available to it by the complainant and the State party. The findings of the Committee are communicated to the parties (art. 22, para. 7, of the Convention and rule 118 of the rules of procedure) and are made available to the public. The text of the Committee's decisions declaring complaints inadmissible under article 22 of the Convention is also made public, without disclosing the identity of the complainant, but identifying the State party concerned.

120. Pursuant to rule 121, paragraph 1, of its rules of procedure, the Committee may decide to include in its annual report a summary of the communications examined. The Committee shall also include in its annual report the text of its decisions under article 22, paragraph 7, of the Convention.

B. Interim measures of protection

121. Complainants frequently request preventive protection, particularly in cases concerning imminent expulsion or extradition, where they allege a violation of article 3 of the Convention. Pursuant to rule 114, paragraph 1, of the Committee's rules of procedure, at any time after the receipt of a complaint, the Committee, through its Rapporteur on new complaints and interim measures, may transmit to the State party concerned a request that it take such interim measures as the Committee considers necessary to avoid irreparable damage to the victim or victims of the alleged violations. The State party shall be informed that such a request does not imply a determination of the admissibility or the merits of the complaint. During the reporting period, requests for interim measures of protection were received in 51 complaints, of which 47 were granted by the Rapporteur on new complaints and interim measures, who regularly monitors compliance with the Committee's requests for interim measures.

122. The decision to grant interim measures may be adopted on the basis of information contained in the complainant's submission. Pursuant to rule 114, paragraph 3, of the Committee's rules of procedure, this decision may be reviewed by the Rapporteur on new complaints and interim measures, at the initiative of the State party, in the light of timely information received from that State party to the effect that the need for interim measures is not justified and the complainant does not face any prospect of irreparable harm, as well as subsequent comments, if any, from the complainant. The Rapporteur has taken the position that such requests need only be addressed if based on new and pertinent information which was not available to him or her when he or she took his or her initial decision on interim measures.

123. The Committee has conceptualized the formal and substantive criteria applied by the Rapporteur on new complaints and interim measures in granting or rejecting requests for interim measures of protection. Apart from timely submission of a complainant's request for interim measures of protection under rule 114, paragraph 1, of the Committee's rules of procedure, the basic admissibility criteria set out in article 22, paragraphs 1 to 5, of the Convention must be met by the complainant for the Rapporteur to act on his or her request. The requirement of exhaustion of domestic remedies need not be fulfilled if the only remedies available to the complainant are without suspensive effect, i.e. remedies that, for instance, do not automatically stay the execution of an expulsion order to a State where the complainant might be subjected to torture, or if there is a risk of immediate deportation of the complainant after the final rejection of his or her asylum application. In such cases, the Rapporteur may request the State party to refrain from deporting a complainant while his or her complaint is under consideration by the Committee, even before domestic remedies have been exhausted. As for substantive criteria to be applied by the Rapporteur, a complaint must have a reasonable likelihood of success on the merits for it to be concluded that the alleged victim would suffer irreparable harm in the event of his or her deportation.

124. In cases concerning imminent expulsion or extradition where a complaint failed to establish a prima facie case with a reasonable likelihood of success on the merits that would allow the Rapporteur on new complaints and interim measures to conclude that the alleged victim would suffer irreparable harm in the event of his or her deportation, the complainant is requested in writing to confirm his or her interest in having his or her communication considered by the Committee, despite the rejection, by the Rapporteur, of the respective request for interim measures. In some cases, requests for interim measures are lifted by the Rapporteur, pursuant to rule 114, paragraph 3, of the Committee's rules of procedure and on the basis of pertinent information submitted by State party that obviates the need for interim measures.

C. Progress of work

125. At the time of adoption of the present report the Committee had registered, since 1989, 604 complaints concerning 32 States parties.[13] Of those, 167 complaints had been discontinued and 67 had been declared inadmissible. The Committee had adopted final decisions on the merits on 239 complaints and found violations of the Convention in 88 of them. A total of 131 complaints were pending for consideration, of which one was declared admissible and was pending a decision on the merits.

126. At its fifty-first session, the Committee adopted decisions on the merits in respect of complaints No. 376/2009 (*Bendib v. Algeria*), No. 387/2009 (*Dewage v. Australia*), No.

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[13] The complaints examined by the Committee in relation to the Federal Republic of Yugoslavia, as well as to Serbia and Montenegro, are attributed to Serbia for statistical purposes.

426/2010 (*R.D. v. Switzerland*), No. 429/2010 (*Sivagnanaratnam v. Denmark*), No. 434/2010 (*Y.G.H. et al. v. Australia*), No. 438/2010 (*M.A.H. and F.H. v. Switzerland*) and No. 441/2010 (*Evloev v. Kazakhstan*). The text of those decisions is also reproduced in annex XIV to the present report. The Committee also declared admissible one case, 402/2009 (*N.A. v. Algeria*).

127. Complaint No. 376/2009 (*Bendib v. Algeria*), was submitted by Djamila Bendib, on behalf of her deceased son. She alleged that her son had been the victim of a violation of articles 2 (para. 1), 11, 12, 13 and 14, read in conjunction with articles 1 and 16 of the Convention. On 20 December 2006, while returning from evening prayers, the son of the complainant was detained for one day in military barracks of the Intelligence and Security Department (DRS). On 23 December 2006, the son of the complainant was arrested a second time, along with six other persons, by the same DRS officials and taken to the DRS military barracks, where he and the others were tortured. On 29 December 2006, individuals dressed in civilian clothing and accompanied by police officers informed his family that he had died while in police custody. When the body of the deceased was returned to his family, numerous signs of torture were visible all over the body. The official explanation was that the complainant's son had committed suicide. None of the numerous requests made by the victim's family to investigate the circumstances of his death led to an investigation. The complainant maintained that the Algerian legislation contained no provision prohibiting the use of confessions or statements extracted under torture as evidence, and that the legislation provided for a period of police custody of up to 12 days, but made no provision for contact with the outside world. The Committee concluded that the facts, as submitted by the complainant, constituted acts of torture, within the meaning of article 1 of the Convention; it also found that the facts before it disclosed a violation of articles 1, 2 (para 1), 11, 12, 13 and 14 of the Convention.

128. Complaint No. 387/2009 (*Dewage v. Australia*) concerned a national of Sri Lanka of Sinhalese ethnic origin, who claimed that his deportation from Australia to Sri Lanka would constitute a violation of article 3 of the Convention, because his family was known to be prominent supporters of the United National Party (UNP), and he had been an UNP activist since he was 18 years old. He maintained that he had been repeatedly harassed by representatives of the governing political parties for his affiliation with UNP and his trade union activism. The complainant claimed that his forcible deportation to Sri Lanka would amount to a violation of article 3 of the Convention as he feared that he would be tortured by the Sri Lankan authorities because of his past involvement with UNP. With respect to the risk that the complainant might be subjected to torture at the hands of government officials upon return to Sri Lanka, the Committee noted in particular that the main alleged perpetrator of the harassment against the complainant had been previously jailed for killing UNP members and that, despite that, he had been re-elected to his position in the governing party and had stood for elections in 2011. The Committee also took particular note of the fact that the complainant had been diagnosed with post-traumatic stress disorder and a major depressive disorder linked to trauma suffered in Sri Lanka, and also took note of a report from the Edmund Rice Centre confirming his well-founded fear of being tortured and persecuted by Sri Lankan officials upon return to Sri Lanka. The Committee concluded that there were substantial grounds for believing that the complainant would face a foreseeable, real and personal risk of being subjected to torture by Government officials if returned to Sri Lanka, and that the removal of the complainant to Sri Lanka would constitute a breach of article 3 of the Convention.

129. Complaint No. 426/2010 (*R.D. v. Switzerland*), concerned a national of Ethiopia who claimed that her deportation to Ethiopia would constitute a violation by Switzerland of article 3 of the Convention owing to her active participation in Ethiopian dissident activities in Switzerland and to her father's and brother's association or imputed association with the political opposition. The Committee found that the complainant had failed to substantiate

her claims in relation to her political or other circumstances, in particular with respect to whether they would be of such significance to attract the interest of the Ethiopian authorities, nor had she submitted any credible evidence to demonstrate that she was at a personal risk of being tortured or otherwise subjected to ill-treatment if returned to Ethiopia. It concluded that the decision of the State party to return the complainant to Ethiopia did not constitute a breach of article 3 of the Convention.

130. Complaint No. 429/2010 (*M.S. v. Denmark*) concerned a national of Sri Lanka, who claimed that her deportation to Sri Lanka would constitute a violation by Denmark of article 3 of the Convention because of her affiliation with the Liberation Tigers of Tamil Eelam. The complainant is a Tamil; although she was never a Tamil Tiger, her nephew, who was a prominent Tamil Tiger militant, was killed in 1999 and the complainant organized his funeral and surrounding events. She maintained she would be targeted by the authorities also because her husband had lent the Tamil Tigers a fishing boat and because she and her husband had sheltered militants in their house and had served them food on many occasions. The Committee observed that the complainant's past activities were not of such significance as to attract the interest of the authorities if the complainant were to be returned to Sri Lanka in 2010. The Committee recalled its general comment No. 1, according to which the burden of presenting an arguable case lay with the author of a communication and concluded that the complainant had not discharged that burden of proof and that the decision of the State party to return the complainant to Sri Lanka did not constitute a breach of article 3 of the Convention.

131. Complaint No. 434/2010 (*Y.G.H. et al. v. Australia*) concerned a Chinese national and his wife and their child, also nationals of China, who claimed that their deportation to China by Australia would violate articles 3 and 16 of the Convention, because the main complainant had been a member of the underground Quiets church, had allowed meetings of the church to be conducted in his store, had been questioned by police, had been detained on two occasions and, on another occasion, had been forced to join a "study class" organized by the Government of China, and had been sent to a detention camp, where he had been subjected to both mental and physical abuse. He further maintained that after his arrival to Australia he had been sought by the authorities in China and that he had been served with a summons to appear before a court due to his unauthorized religious activities. The Committee, irrespective of the question regarding the complainant's affiliation with the church, was of the view that he had not submitted sufficient evidence to substantiate that he would risk being subjected to torture by the authorities if returned to China, and concluded that the removal of the complainants to China by the State party would not constitute a breach of article 3 of the Convention.

132. Complaint No. 438/2010 (*M.A.H. and F.H. v. Switzerland*) concerned a national of Tunisia and his spouse, also a national of Tunisia, who claimed that their expulsion to Tunisia would constitute a violation, by Switzerland, of article 3 of the Convention, because the first complainant and two friends had supported families of political prisoners from the Ennahda political party. His friends had been arrested; the complainant and his spouse had been repeatedly interrogated and placed under police surveillance. The complainants argued that they would be arrested if forcibly returned to Tunisia because of their past activities and because they had left the country illegally; that the conditions of detention in Tunisia were extremely harsh; and that the first complainant had serious health issues, thus a prison sentence would put his life at risk and would subject him to inhuman and degrading treatment. The Committee observed that the political regime in Tunisia had changed since the complainants' departure and took note of the low-level nature of the first complainant's political activities in Tunisia and of the existing inconsistencies in the complainants' accounts. It also observed that the complainants had failed to furnish sufficient evidence to support the claim that they had been arrested and interrogated in connection with the first complainant's political activities. It concluded that the decision of

the State party to expel the complainants to Tunisia would not constitute a violation of article 3 of the Convention.

133. Complaint No. 441/2010 (*Evloev v. Kazakhstan*) concerned a Kazakh national who claimed to be a victim of violations by Kazakhstan of his rights under articles 1, 2, 12, 13, 14 and 15 of the Convention. In October 2008, around 8 p.m., a mother and her three minor children were murdered in their home in Astana. Based on a statement by another suspect, allegedly extracted under torture, the complainant was arrested in the Chechen Republic of the Russian Federation and extradited to Kazakhstan. On his way to Astana he was accompanied by Kazakh police officers, who during the two refuelling stops took him off the airplane and subjected him to humiliation. Upon arrival he was subjected to torture to force him to confess his guilt in the murders. In particular, at least six police officers hit him in the area of his kidneys; threatened him with sexual violence; tied his hands and forced him to lie on the floor; put a gas mask on his head, repeatedly interrupting the air flow, causing him to choke; and inserted hot needles under his nails. They also showed him photos of his father and claimed that he had also been detained and tortured. The Committee noted the complainant's detailed description of the treatment he had been subjected to while in police custody and the content of a medical report documenting the physical injuries inflicted on him. The Committee considered that the treatment he had been subjected to could be characterized as severe pain and suffering and that it had been inflicted on him deliberately by the investigating officers. The Committee concluded that the above treatment constituted torture within the meaning of article 1 of the Convention and that the State party had failed in its duty to prevent and punish acts of torture, in violation of article 2, paragraph 1, of the Convention. It also found that the State party had failed to comply with its obligation to carry out a prompt and impartial investigation into the complainant's allegations of torture, and with its obligation to ensure the complainant's right to complain and to have his case promptly and impartially examined by the competent authorities, in violation of articles 12 and 13 of the Convention. It further found a violation of article 14 because of the absence of criminal proceedings, which deprived the complainant of the possibility of filing a civil suit for compensation, and of article 15 because the State party had failed to ascertain whether or not statements admitted as evidence in the proceedings had been made as a result of torture.

134. At its fifty-second session, the Committee adopted decisions on the merits in respect of complaints No. 366/2008 (*Haro v. Argentina*), No. 372/2009 (*Barry v. Morocco*), No. 402/2009 (*Abdelmalek v. Algeria*), No. 455/2011 (*X.Q.L. v. Australia*), 466/2011 (*Alp v. Denmark*), No. 475/2011 (*Nasirov v. Kazakhstan*), No. 477/2011 (*Aarrass v. Morocco*), No. 478/2011 (*Kirsanov v. Russian Federation*), No. 481/2011 (*K.N., F.W. and S.N. v. Switzerland*), Nos. 483/2011 and 485/2011 (*X and Z v. Finland*), No. 497/2012 (*Bairamov v. Kazakhstan*), No. 503/2012 (*Ntikarahera v. Burundi*) and No. 525/2012 (*R.A.Y. v. Morocco*). The text of those decisions is also reproduced in annex XIV to the present report.

135. Complaint No. 366/2008 (*Haro v. Argentina*) concerned a national of Argentina serving a sentence for the crimes of voluntary manslaughter and serious bodily injury, who alleged that on 17 November 2003, while he was being held in local police station No. 2 of Comodoro Rivadavia, he had been subjected to acts of violence by security personnel, during which he had suffered a superficial cut to the front of the neck and traumatic total ablation of the right testicle and partial ablation of the left testicle. Despite the complaints of torture and ill-treatment by the complainant's family, the judicial authorities had failed in their duty to investigate, since the initial complaint had been closed by the Chief Prosecutor of Comodoro Rivadavia on the grounds that no evidence of an offence had been found. Likewise, the request to have the case reopened was considered superficially by representatives of the Public Prosecution Service. The complainant also pointed out that the initial complaint had been dismissed primarily on the basis of medical reports that

suggested that he had deliberately injured himself. Nevertheless, at the request of his defence counsel, he had undergone a new psychological examination, the results of which contradicted the reports on the state of his mental health considered by the Prosecutor. The complainant argued that the judicial authorities had not taken measures to conduct a proper and effective investigation and punish those responsible, in violation of his rights under articles 1, 2, 10 to 14 and 16 of the Convention. The Committee noted that, when considering the initial complaint, the Office of the Prosecutor had requested information about the state of the complainant's physical and mental health from the prison authorities and the Regional Hospital; that it had taken statements from the police officers who had been on duty on 17 November 2003 and from third persons, including doctors and the member of the fire brigade who had come to the complainant's assistance, and other detainees who had been in the same unit as the complainant. Subsequently, between August and November 2006, a further re-examination of the case had been carried out by an official from the Prosecutor's Office and a commissioner attached to the Public Prosecution Service. The Committee observed that the decision to dismiss the complaint was not based solely on the medical reports on the complainant's state of health, but on evidence, reports and statements from various sources, some of them without any apparent conflict of interest. The Committee further considered that, given the contradictions between the medical and psychological reports on the state of the complainant's mental health, those reports did not constitute fully convincing evidence that could help clarify the question of who was responsible for the injuries to the complainant. The Committee considered that it was not able to conclude, based on the information provided by the parties, that the investigation into the facts that took place on 17 November 2003 lacked the impartiality required under articles 12 and 13 of the Convention. Consequently, the Committee found no violations of the Convention.

136. Complaint No. 372/2009 (*Barry v. Morocco*) concerned a Senegalese national who claimed to have been victim of a violation of article 16 of the Convention during his expulsion to Mauritania by the Moroccan authorities. The Moroccan authorities intercepted the boat he had embarked on with a group of undocumented migrants in order to reach the Canary Islands (Spain). He was brought by the military authorities (*gendarmerie*) to the desert border area between Morocco and Mauritania, which includes a large minefield, and he was forced to walk 50 km through the desert to reach the first Mauritanian town, without adequate equipment, food or water. He stated that the circumstances of his deportation had subjected him to pain and physical and mental suffering, constituting at the very least cruel, inhuman and degrading treatment. The State Party maintained that around the alleged date of the complainant's expulsion, a group of migrants had been expelled in accordance with the domestic legislation, which provided for legal safeguards for the person being deported. It further noted that the complainant had not followed the judicial procedure to appeal his deportation. The Committee noted that, in practice, the complainant had not been granted access to domestic remedies to appeal his expulsion, as provided by the domestic legislation. The Committee considered that the circumstances of the complainant's expulsion by the State party constituted an infliction of a severe physical and mental suffering on the complainant by public officials, which amounted to cruel, inhuman or degrading treatment, in violation of article 16 of the Convention.

137. Complaint No. 402/2009 (*Abdelmalek v. Algeria*) concerned an Algerian citizen who claimed to be a victim of a violation of his rights under articles 1, 2 (para 1), 6, 7, 11, 12, 13, 14 and 15, and, alternatively, article 16, of the Convention. He had joined the Algerian Army in 1991. In 1998, he had written a report implicating the Minister for Small and Medium-Sized Enterprises in the recruitment of young Islamists to be sent to Afghanistan. He also had written several political articles that had been published in Algerian newspapers. Since then he had experienced problems with the Algerian authorities and his hierarchy. Fearing for his own safety, he had tried to flee Algeria in 2001, using fake

documents. He had been arrested at the border, detained and severely tortured by the security services and sentenced to 10 months in prison for the use of fake documents. In 2005, he had been arrested in connection with a drug trafficking case. He had been tortured and forced to confess that he had placed drugs in the car of a family member of the Minister mentioned in the 1998 report. He had been sentenced to one year in prison on the basis of his confession. In 2006, he had gone to France, where he obtained refugee status. The State party contested the admissibility of the communication without substantiating its claim. The Committee took note of the ambiguous circumstances surrounding the complainant's requests to withdraw his complaint, followed by his request to resume the procedure, and the State party's lack of cooperation regarding the submission of observations on the admissibility and merits of the case. On 18 November 2013, at its fifty-first session, the Committee decided that the complaint was admissible and asked the State party to submit its observations on the merits. The State party maintained that the complainant had fabricated his allegations to avoid facing justice for his numerous run-ins with the law. The Committee found that the information before it disclosed a violation of articles 1, 2, paragraph 1, read in conjunction with article 1, article 11 and article 12, read alone and in conjunction with articles 6 and 7, as well as articles 13, 14 and 15 of the Convention.

138. Complaint No. 455/2011 (*X.Q.L. v. Australia*) concerned a national of China, who had requested and was denied a protection visa under the Australian Migration Act 1958 and was requested to leave the country. She claimed that, in February 2005, she had been taken into police custody, beaten and questioned about her activities as a Tien Tao practitioner. The police also requested her to help arrest other members of the organization. Given that she was a practitioner of Tien Tao, a religion forbidden in China, she claimed that her forced return to China would constitute a violation by Australia of article 3 of the Convention. The Committee observed that the Refugee Review Tribunal was unable to verify the complainant's identity, as she had used different names and identity documents on her protection visa application and the Refugee Review Tribunal application and had claimed to be a Tien Tao practitioner only after having withdrawn her claim of being a Falun Gong practitioner. The Committee was of the view that the complainant had failed to submit convincing evidence to substantiate her claim that she would be in danger of being subjected to torture were she to be returned to China, irrespective of the question regarding her affiliation with the Tien Tao religion. The Committee found that her removal to China by the State party would not constitute a breach of article 3 of the Convention.

139. Complaint No. 466/2011 (*Alp v. Denmark*) concerned a Turkish national, who claimed that his deportation to Turkey would expose him to a risk of torture, on account of his previous political activities for the Kurdistan Liberation Party and his failure to complete military service, and that the State party had failed to conduct a medical examination to verify his allegations of past torture, which allegedly had taken place in 1980. He was deported to Turkey on 28 June 2011. The Committee found that the complainant had not provided sufficient evidence to show that, after his return to Turkey, he would be imprisoned for his past political activities or his failure to do military service, that he would have a disproportionate sentence imposed on him in that connection, or that he would face treatment contrary to the Convention. Noting that the complainant's request for a medical examination was formulated only at a very late stage of the extradition proceedings, the Committee found that nothing permitted it to establish that the Danish authorities had failed to conduct a proper investigation and that, over 20 years after the alleged torture had occurred, the complainant would still face a foreseeable, real and personal risk of being tortured or be subjected to inhuman and degrading treatment in Turkey. The Committee therefore found that the complainant's deportation did not constitute a violation of article 3 of the Convention.

140. Complaint No. 475/2011 (*Nasirov v. Kazakhstan*) concerned a national of Uzbekistan, who at the time of the submission was detained in Kazakhstan and awaiting

extradition to Uzbekistan. It was submitted that the alleged victim's extradition had been sought on charges related to his alleged participation in the Andijan events, that his co-workers had been arrested, tortured during the investigation and convicted on terrorism charges related to organizing and participating in the Andijan events. It was also submitted that torture was systematic in Uzbekistan and that, in particular, suspected participants in the Andijan events were persecuted and subjected to mass arbitrary arrest and torture. The State party challenged the admissibility of the communication based on non-exhaustion of the domestic remedies, stating that the alleged victim had applied for refugee status. The Committee observed that the State party's domestic law regulating the refugee status determination procedure allowed the authorities to refuse refugee protection to an individual regarding whom there were serious grounds to assume that he or she had participated in the activities of terrorist, extremist or banned religious organizations, regardless of the threat of torture he or she might face in the country of origin. The Committee considered that it was not precluded, by the non-exhaustion of the domestic remedies, from examining the communication under article 22, paragraph 5 (b), of the Convention. In the circumstances of the case, the Committee considered that the information before it sufficiently established the significant risk of torture or other cruel, inhuman or degrading treatment in Uzbekistan, in particular for individuals accused of terrorism and of having participated in the Andijan events. It observed that the allegations that the victim would be tortured had been plainly rejected by the domestic court without investigation. The Committee concluded that the alleged victim's extradition to Uzbekistan would constitute a violation of article 3 of the Convention.

141. Complaint No. 477/2011 (*Aarrass v. Morocco*) concerned a dual Belgian and Moroccan national, who alleged that he had been a victim of violations of articles 2, 11, 12, 13 and 15 of the Convention. On 14 December 2010, the complainant was extradited from Spain to Morocco on charges of membership in a terrorist organization. On arrival in Casablanca, he was placed in police custody in a location he could not identify because he was taken there blindfolded. He claims that he was then subjected to repeated sessions of torture, during which he was struck with truncheons, slapped and electrocuted, deprived of sleep, food and water, threatened with rape and raped with a glass bottle, given injections, after which he experienced bouts of dementia and unconsciousness, and driven to a forest and subjected to mock execution by shooting, and his head was held in a bucket of water until he fainted. He was forced to sign a pre-written confession in Arabic, a language he does not know well. He was brought before an investigating judge who did not take note of his multiple injuries or request a medical examination. At his next appearance before a judge, his lawyer made allegations of ill-treatment, but the judge refused to take note of them. The complainant further filed complaints and requests for a medical examination with the Ministry of Justice, with the Prosecutor-General at the Rabat Court of Appeal and the National Human Rights Council, and again before the trial court. In the prison where he is detained, the complainant is not allowed confidential interviews with his lawyers. He also submitted that he had been held in complete isolation for several months, during which time he could not correspond with his lawyers or his relatives. The State party maintained that the communication was inadmissible, inter alia, for non-exhaustion of domestic remedies. The Committee noted that the complainant had not been guaranteed access to medical and legal assistance, particularly during his time in custody, and that he had been forced to sign statements in a language that he did not understand. It also took note, inter alia, that in the context of the complainant's criminal complaint about torture, a medical examination had only been undertaken more than a year after the alleged events, that the complainant's confession had had a decisive impact on the verdict and that the Court of Appeal had taken no account of the complainant's allegations of torture when deciding to convict him. Accordingly, the Committee found a violation of articles 2 (para. 1), 11, 12, 13 and 15 of the Convention.

142. Complaint No. 478/2011 (*Kirsanov v. Russian Federation*) concerned a national of the Russian Federation, born on 30 November 1969. The complainant claimed that his excessively long detention in inhuman conditions at the temporary confinement ward during the pretrial investigation of the criminal charges against him amounted to torture, which was perpetrated by the State to elicit a confession, in violation of article 15 of the Convention. He also submitted that the State party had violated his rights under articles 12 and 13 of the Convention, by failing to investigate his torture claims, and under article 14, by failing to provide him with adequate redress. The Committee took note of the State party's submissions that the communication was inadmissible since the complainant had been awarded compensation by the civil court, and that the communication constituted an abuse of the right of submission. The Committee considered that it was not precluded by the requirements of article 22 of the Convention from examining the communication. The Committee considered that the conditions of detention in the temporary confinement ward amounted to cruel, inhuman or degrading treatment within the meaning of article 16 of the Convention. The Committee did not find violations of articles 12 and 13 and observed that articles 14 and 15 of the Convention referred only to torture in the sense of article 1 of the Convention and did not cover other forms of ill-treatment. The Committee however found that the State party was obliged to grant redress and fair and adequate compensation to the victim of an act in breach of article 16 of the Convention, and considered that the State party had failed to observe its obligations under article 16 of the Convention by failing to provide the complainant with redress and with fair and adequate compensation.

143. Complaint No. 481/2011 (*K.N., F.N. and S.N. v. Switzerland*) concerned a family of Iranian nationals who claimed that their deportation to the Islamic Republic of Iran would constitute a violation by Switzerland of article 3 of the Convention. The complainants alleged that K.N. had collected funds and recruited new members for the Komala opposition party in the Islamic Republic of Iran, while S.N. had helped him to perform computer-related administrative tasks for Komala. The complainants claimed that they had all been actively sought by the Iranian security forces due to their political involvement, and had fled the Islamic Republic of Iran for that reason. They also alleged that they had participated in opposition demonstrations against the Iranian regime in Switzerland, and claimed that those activities would have been noticed by the Iranian authorities through the extensive surveillance of dissidents. The Committee found that the complainants had provided documentation indicating that they faced an imminent risk of torture if returned to the Islamic Republic of Iran. The Committee also considered that the human rights situation in the Islamic Republic of Iran was extremely alarming, especially in the light of widespread reports on the use of torture of political opponents and the frequent use of the death penalty, and that the Iranian authorities extensively monitored political dissidence. The Committee concluded that the deportation of the complainants to the Islamic Republic of Iran in those circumstances would constitute a violation by the State party of article 3 of the Convention.

144. Complaint Nos. 483/2011 and 485/2011 (*X and Z v. Finland*) concerned two brothers, both citizens of the Islamic Republic of Iran. They claimed that their deportation to the Islamic Republic of Iran would constitute a breach of article 3 of the Convention by the State party. Both brothers are of Kurdish ethnicity, are members of the opposition party Komala, and belong to a high-profile family, which has already been targeted by the Iranian authorities. In addition, the complainants both remained politically active after their arrival to Finland. In considering the two complaints jointly, the Committee examined medical reports submitted by the complainants, evidencing that they might have been subjected to torture in the past. It also examined submissions on the general human rights situation in the Islamic Republic of Iran. Specifically, the Committee gave weight to recent reports of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran regarding the persecution and execution of members of opposition political parties, such as

Komala, and of individuals of Kurdish ethnicity. Based on those facts, as well as on the complainants' previous incarceration and detailed description of torture suffered during the detention, the Committee concluded that there were substantial grounds for believing that the complainants risked being subjected to torture if returned to the Islamic Republic of Iran.

145. Complaint No. 497/2012 (*Bairamov v. Kazakhstan*) concerned a Kazakh national, who claimed that the treatment inflicted on him to force him to confess guilt, in the absence of a lawyer, shortly after his apprehension in July 2008 amounted to torture within the meaning of article 1 of the Convention. He had been beaten for a long period of time and had sustained injuries of varying severity. He further claimed that the State party had failed to establish adequate safeguards against torture and ill-treatment, contrary to article 2, paragraph 1, of the Convention, and had failed to conduct a prompt and adequate investigation into his allegations of ill-treatment for the purposes of articles 12 and 13 of the Convention. Furthermore, he claimed that he could not obtain compensation, in violation of article 14 of the Convention. In addition, contrary to the guarantees under article 15 of the Convention, his forced confessions had been retained by the court when establishing his guilt. Finally, the complainant claimed a violation of article 16 of the Convention on account of the inadequate health care he received while in detention. The State party maintained that the complainant's claims under articles 1, 2 and 12 to 16 of the Convention were inadmissible, as the allegations concerning his ill-treatment aimed at obtaining his forced confessions had not been corroborated by any evidence and, therefore, were unfounded. The Committee found the complainant's complaint under article 16 of the Convention insufficiently substantiated and, therefore, inadmissible. As to the rest of his claims, the Committee declared them admissible and found that the facts before it disclosed violations of article 1 in conjunction with article 2, paragraph 1, and of articles 12 to 15 of the Convention.

146. Complaint No. 503/2012 (*Ntikarahera v. Burundi*) concerned a national of Burundi, who worked as a night watchman at Prince Regent Charles Hospital in Bujumbura. On the night of 17 October 2010, the mayor and the municipal police commissioner of Bujumbura, accompanied by 11 unidentified individuals, threw two severely injured persons in front of the hospital. After the complainant asked questions, he was slapped and kicked, which resulted in bleeding and intense pain. He was then placed in a van. On the way to jail, he was beaten in the ribs with rifles and kicked in the temple until he lost consciousness. He was placed in detention in a cramped cell, still handcuffed and in an alarming condition. He remained continuously handcuffed for 32 hours, in a cell shared with approximately 40 detainees. He was not allowed to see a doctor immediately, and was not provided with food. On 20 October 2010, the complainant was released and admitted to hospital. He had to be hospitalized again in 2011, and to undergo surgery on his leg. He still has pain in his left leg and has not recovered full mobility to date. On several occasions, the complainant lodged formal complaints with the Public Prosecutor and the Supreme Court, but no investigation was conducted. The State party did not submit any observation on the admissibility and/or merits of the case. The Committee determined that the facts revealed acts of torture within the meaning of article 1 of the Convention. It further determined that the lack of any mechanism to provide oversight of his place of detention exposed the complainant to an increased risk of being subjected to torture and deprived him of any possible remedy, in violation of article 2, paragraph 1, read in conjunction with article 1 of the Convention. As the State party had still not conducted any investigation four years after the incidents, the Committee found a breach of articles 12 and 13. In addition, it observed that the complainant did not benefit from any form of redress, in violation of article 14. Finally, the Committee found a violation of article 16, read in conjunction with article 11, in relation to the conditions of detention.

147. Complaint No. 525/2012 (*R.A.Y. v. Morocco*) concerned a dual French and Algerian citizen, ordinarily residing in France, who was arrested in Morocco on 26 February 2012, under an International Criminal Police Organization (INTERPOL) international search warrant. He claimed to be victim of a violation of article 15 of the Convention by Morocco, which had authorized his extradition to Algeria on the basis of incriminating information that had allegedly been obtained under torture. The complainant also claimed that if he were to be extradited to Algeria, he would be at risk of being tortured, in violation of article 3 of the Convention. The State party contested the admissibility of the communication on the basis that the domestic remedies had not been exhausted; it also considered that the complainant had not substantiated his claims. The Committee observed that the claim under article 15 of the Convention had never been raised before the Moroccan courts during the judicial proceedings related to the complainant's extradition and that it was therefore not admissible. The Committee considered that the allegation of violation of article 3 of the Convention was vague and general, that the complainant had not substantiated that he faced a personal and actual risk of being tortured if extradited to Algeria and that, accordingly, his extradition would not constitute a violation of article 3 of the Covenant.

D. Follow-up activities

148. At its twenty-eighth session, in May 2002, the Committee against Torture established the function of a Rapporteur for follow-up to decisions on complaints submitted under article 22. At its 527th meeting, on 16 May 2002, the Committee decided that the Rapporteur should engage, inter alia, in the following activities: monitoring compliance with the Committee's decisions by sending notes verbales to States parties enquiring about measures adopted pursuant to the Committee's decisions; recommending to the Committee appropriate action upon the receipt of responses from States parties, in situations of non-response, and upon the receipt henceforth of all letters from complainants concerning non-implementation of the Committee's decisions; meeting with representatives of the permanent missions of States parties to encourage compliance and to determine whether advisory services or technical assistance by the Office of the United Nations High Commissioner for Human Rights would be appropriate or desirable; conducting, with the approval of the Committee, follow-up visits to States parties; and preparing periodic reports for the Committee on his or her activities.

149. The present report compiles information received from States parties and complainants since the fiftieth session of the Committee against Torture, which took place from 6 to 31 May 2013.

150. In addition to the follow-up activity described below, during the reporting period the secretariat sent reminders to the State party to submit comments in case No. 428/2010, *Kalinichenko v. Morocco*, and to the counsel to send comments in case No. 319/2007, *Singh v. Canada*. By the end of the reporting period, no replies to those reminders had been received.

State party	**Algeria**
Case	***Hanafi*, 341/2008**
Decision adopted on	3 June 2011
Violation	Articles 1, 11, 12, 13 and 14

Remedy recommended	Obligation to conduct an impartial investigation into the incidents in question, with a view to bringing those responsible for the victim's treatment to justice, and to inform the Committee, within 90 days from the date of the transmittal of the decision, of the steps the State has taken in response to the views expressed in the decision, including compensation of the complainant.
Previous follow-up information	A/68/44, chap. VI

On 19 April 2013, counsel for the complainant submitted that the decision of the Committee had yet to be implemented, 20 months after its adoption. No impartial investigation has taken place, and the widow of the victim has not received compensation. In addition, the letter sent by the counsel to the General Prosecutor on 18 May 2012 remains unanswered.

The counsel notes that, during its November 2012 session, the Committee expressed concern regarding the lack of implementation of its decision and stressed the need for a more firm approach towards Algeria.

The counsel accordingly suggests that the Committee should ensure vigorous follow-up with the Algerian authorities and should demand the opening of an effective, independent and impartial investigation, as stipulated in its decision. The Committee is also asked to kindly consider initiating joint follow-up action with the Human Rights Committee, which has issued eight decisions finding Algeria in violation of the International Covenant on Civil and Political Rights that have also not been implemented. Five of those decisions concern cases of disappearances. A joint follow-up mission could also be considered, in order to prevent all the decisions from remaining only on paper, to the detriment of the victims and their families.

The secretariat has transmitted the letter to the State party for its observations. The secretariat also reminded the State party to submit comments on the information transmitted to it on 8 January 2013.

On 7 October 2013, the State party informed the Committee that the Prosecutor of the Tiaret court had initiated an investigation and had addressed the investigative judge of the second chamber to lead all investigations necessary to uncover the truth.

The State party's submission has been transmitted to the complainant for comments.

Committee's decision: To keep the follow-up dialogue open.

State party	**Australia**
Case	***Dewage*, 387/2009**
Decision adopted on	14 November 2013
Violation	Article 3
Remedy recommended	The State party has an obligation to refrain from forcibly returning the author to Sri Lanka or to any other country where he runs a real risk of being expelled or returned to Sri Lanka.

On 28 February 2014, the State party submitted that it was in the process of finalizing its response to the Committee's decision and would provide it to the Committee as soon as possible.

Committee's decision: To keep the follow-up dialogue open.

State party	**Germany**
Case	***Abichou*, 430/2010**
Decision adopted on	21 May 2013
Violation	Article 3
Remedy recommended	The Committee urged the State party to provide redress to the victim, including adequate compensation. The Committee also wished to be informed, within 90 days, of the steps taken by the State party to give effect to the decision.

On 18 November 2013, the State party submitted that the Committee's decision had been translated into German and sent to the ministries of justice of the federal states, requesting them to inform the courts. The federal states' ministries responsible for police and immigration have also been informed. The decision has been presented by the Federal Ministry of Justice to practitioners in recent trainings and presentations and published on the website of the Ministry. The Federal Office of Justice, which is responsible for granting leave to extradite, had adapted its practice regarding diplomatic assurances even before the decision was issued, owing to recommendations by the European Court of Human Rights.

The State party further submits that the complainant has not submitted any claims for compensation, but, if he does, such claims will be considered carefully by the Federal Government.

On 28 January 2014, the complainant, Onsi Abichou, recalled that the Committee had concluded that the decision of Germany to extradite him to Tunisia, despite the Committee's request that Germany suspend his extradition due to the risk of him being subjected to torture, had violated his right under article 3 of the Convention. The complainant requested that the Committee order Germany to pay compensation in the amount of €170,360, to which he claims he is entitled for the psychological, moral, and material damage incurred during his 19 months of imprisonment, from his arrest in Germany on 17 October 2009 until his liberation in Tunisia on 19 May 2011. The complainant sustains that Germany is bound to offer, in good faith, effective reparation as per article 22 of the Convention; the Vienna Convention and principles 1, 5 and 9 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

The complainant had been arrested in Germany, following an INTERPOL order filed by Tunisia, on charges of drug trafficking based on information obtained from his alleged accomplice under torture. The awareness that the complainant would not be offered a fair trial and the reports of torture as a practice in Tunisian prisons had substantiated his fear of being subject to torture once deported to Tunisia and had inflicted on him grave psychological distress. Furthermore, once in prison in Tunisia, the complainant had remained in deplorable detention conditions. For the moral and psychological distress, he requests €40,000. His wife, daughter (3 and a half years old at the time of the complainant's imprisonment) and son (a newborn at the time of the complainant's imprisonment) had been deprived of contact with their husband/father for 19 months. For the damage they suffered, the complainant requests €20,000 each. On the grounds of material damage, the complainant requests: €28,500 for the loss of opportunity to create his car trading company in Germany; €15,309 for the loss of income due to the suspension of his unemployment benefits in France; and €25,051.95 in attorney's fees. The complainant's father also assisted his son while in prison, travelling six times from Paris to Tunisia, for which they request the reimbursement of €1,500.

The complainant's comments were transmitted to the State party with a request to comment by 3 April 2014.

Committee's decision: To keep the follow up dialogue open.

State party	**Kazakhstan**
Case	***Gerasimov*, 433/2010**
Decision adopted on	24 May 2012
Violation	Article 1 in conjunction with article 2, paragraph 1, and articles 12, 13, 14 and 22
Remedy recommended	Obligation to conduct a proper, impartial and effective investigation in order to bring to justice those responsible for the complainant's treatment, to take effective measures to ensure that the complainant and his family are protected from any forms of threats and intimidation, to provide the complainant with full and adequate reparation for the suffering inflicted, including compensation and rehabilitation, and to prevent similar violations in the future.

On 14 May 2013, the secretariat sent to the State party a reminder to provide information on the measures it had taken to give effect to the decision of the Committee.

On 7 June 2013, the State party submitted that the District Prosecutor's Office had refused several times to initiate a criminal prosecution regarding the utilization of unauthorized methods by police officers on Alexander Gerasimov. Those decisions had been repeatedly quashed and the case had been returned for additional investigation. The criminal investigation, ultimately initiated by the General Prosecutor's Office, guaranteed the full and complete exploration of the facts of the alleged crime, but no evidence of involvement of police officers in a crime could be obtained and the investigation had been discontinued. That decision had been confirmed by the General Prosecutor's Office.

No threats or intimidation of Mr. Gerasimov or his family after the adoption of the Committee's decision have been registered. The legislation of Kazakhstan does not provide for a mechanism for paying compensation; there is no budget line that could be used to pay compensation following decisions of United Nations committees and, accordingly, such decisions remain unimplemented. The General Prosecutor's Office raised with the Government the issue of the creation of an appropriate mechanism for the implementation of Committee decisions in Kazakhstan. The State party will communicate the outcome of the creation of such mechanism separately.

The State party's observations were transmitted to the complainant for comments.

On 28 June 2013, the complainant's counsel submitted that, to date, the State party had failed to implement the Committee's decision. On 6 February 2013, Mr. Gerasimov asked a non-governmental organization, the Kazakhstan International Bureau for Human Rights and the Rule of Law, to help him ensure the implementation of the Committee's decision. On 14 March 2013, the Bureau sent a letter to the Prime Minister, requesting compensation for the complainant. It received no reply from the Prime Minister's Office. Instead, it received a letter, dated 10 April 2013, by which the Deputy Head of the Department for Combating Economic Crime and Corruption in Kostanai District informed the Bureau that the Department had investigated Mr. Gerasimov's injury, as required by law. In the letter, the Deputy Head of the Department recalled the decision of the Assistant Prosecutor of 6 February 2011 to dismiss the criminal case owing to a lack of evidence and again refused to initiate criminal proceedings. It noted further that the prosecuting agency was not authorized to pay compensation to individuals affected by the actions of police officers. A subsequent letter, dated 21 April 2013, from the Prosecutor General's Office reiterated the Government's position that it would pay compensation only on the basis of a court decision, and since the domestic law did not recognize the Committee's decision as such, no compensation would be forthcoming. The Office further explained that the government budget did not include funds to compensate Mr. Gerasimov.

The counsel submits that the Committee's decision should have led to government efforts to redress the harm that Mr. Gerasimov had suffered. Instead, his attempts to implement the decision have added to his distress. A staff member of the Department for Combating Economic Crime and Corruption called him and informed him that he must go to the Department to obtain the letter denying him compensation. The repeated contact with the Department that intimidated Mr. Gerasimov and his family has caused him fear and concern and has revived memories about the torture he had experienced.

The counsel further submits that the absence of a domestic mechanism for the implementation of the decisions of United Nations committees should not delay the payment of compensation to the complainant. When such a mechanism is created it should ensure the prompt, independent and effective investigation of torture complaints. Other necessary measures to prevent future violation include: independent monitoring of pretrial detention facilities and independent judicial control of the duration and conditions of pretrial detention; a control system for registry records; access to lawyers and doctors immediately upon detention; and the publication of the Committee's recommendations.

The counsel requests the Committee to:

(a) Recognize that the Government of Kazakhstan has not implemented the Committee's decision;

(b) Call on the Government to take steps without further delay to implement the decision and, in particular, to pay full and adequate compensation and to prevent further intimidation of Mr. Gerasimov;

(c) Call on the Government to develop an action plan describing how it will implement the Committee's decisions to prevent similar violations in future.

The counsel's submission was transmitted to the State party for comments, with a deadline of 15 August 2013. On 20 September 2013, the secretariat sent a reminder to the State party to provide comments by 15 October 2013.

On 25 August 2013, the State party submitted that the counsel's submission of 28 June 2014 was unfounded. It further reiterates that the legislation of Kazakhstan does not provide for a mechanism for paying compensation following decisions of United Nations committees and, accordingly, such decisions remain unimplemented. The General Prosecutor's Office had raised with the Government the issue of the creation of an appropriate mechanism for the implementation of Committee decisions in Kazakhstan. The issue is under consideration.

On 29 January 2014, the counsel submitted that, to date, the State party had failed to implement the Committee's decision. The Government had claimed that it had conducted an investigation into the complainant's allegations, but had not provided information on what steps were taken and by whom, or on what basis the investigation had concluded that there was no evidence of officer involvement. The State party has also failed to provide compensation to the complainant. The alleged process of establishing a domestic mechanism for implementing committee decisions is an important initiative, but the need for long-term institutional changes should not serve as an excuse to refuse or delay providing redress to the victim. The counsel further reiterates recommendations submitted previously. The counsel's submission was transmitted to the State party with a request for comments by 21 April 2014.

Committee's decision: To keep the follow-up dialogue open.

State party	**Kazakhstan**
Case	***Abdussamatov et al.*, 444/2010**
Decision adopted on	1 June 2012
Violation	Articles 3 and 22 (extradition to Uzbekistan)
Remedy recommended	The Committee asked the State party to provide redress for the complainants, including return of the complainants to Kazakhstan and adequate compensation.
Previous follow-up information	A/68/44, chap. VI

On 23 July 2013, the State party submitted that at the time of the submission most of the extradited individuals were serving sentences in penitentiaries in Uzbekistan following convictions by the courts. The exceptions are M.F. Yuldoshev, O.A. Pulatov and U.E. Rakhmatov, who were sentenced to punishment different from incarceration, and S.T. Jalolhonov, the criminal prosecution against whom was discontinued as a result of an amnesty. The Kazakhstan legislation provides for the possibility of transferring of individuals to serve sentences in Kazakhstan penitentiaries only for Kazakh citizens or individuals who have permanent residence in Kazakhstan. Considering that Uzbekistan is not a party to an international treaty regulating such issues and that the extradited individuals do not hold Kazakh citizenship the question cannot be resolved in that manner. To date there is no other mechanism for the return of the extradited individuals to Kazakhstan. The Kazakhstan legislation does not provide for a mechanism for paying compensation; there is no budget line that could be used to pay compensation following decisions of United Nations committees and, accordingly, such decisions remain unimplemented. The General Prosecutor's Office raised with the Government the issue of the creation of an appropriate mechanism for the implementation of Committee decisions in Kazakhstan. The State party will communicate the outcome of the creation of such mechanism separately.

The State party's information was submitted to counsel for comments, with a deadline set for 5 September 2013.

On 3 September 2013, the counsel for the complainant submitted that to date none of the complainants had been returned to Kazakhstan nor had they received compensation. Kazakhstan fails to show that it has done anything vis-à-vis the authorities of Uzbekistan to ensure the return of the complainants, such as making ad hoc diplomatic arrangements. Kazakhstan does not explain why those complainants who are not, according to the State party, in detention, have not been invited to return to Kazakhstan as ordered by the Committee. In response to the State party's argument that its internal legislation does not provide for the payment of compensation as ordered by treaty bodies, the counsel recalls that, pursuant to article 27 of the Vienna Convention on the Law of Treaties, a State party may not invoke the provisions of its internal law as justification for its failure to perform an international treaty. The obligation to implement fully the decision is a treaty obligation flowing from the State party's membership in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Otherwise the provisions of article 22 of the Convention would be of no practical use. The counsel submits that the Committee should continue the follow-up procedure and invite the State party to grant to the complainants effectively the remedies specified in the decision.

The counsel's comments were submitted to the State party for comments.

On 10 December 2013, the State party submitted that its representatives had met with the extradited individuals in the various penitentiaries where they were currently serving sentences. The purpose of the meetings was to seek clarification on the conditions in which they are detained and the possible application against them of illegal physical or psychological influence in the course of the pretrial proceedings or the trials or while serving their sentences, and on the existence of complaints regarding torture and other cruel, inhuman or degrading treatment or punishment. During the meetings no complaints regarding human rights violations were submitted by the extradited individuals. At the end of each meeting each individual wrote a communication to the Committee to that effect. The issue of the creation of an appropriate mechanism for the implementation of Committee decisions in Kazakhstan is pending before its Government.

The State party's submission was transmitted to counsel for comments.

Committee's decision: To keep the follow up dialogue open.

State party	**Kazakhstan**
Case	***Evloev*, 441/2010**
Decision adopted on	5 November 2013
Violation	Article 1, in conjunction with article 2, paragraph 1; and articles 12–15
Remedy recommended	The Committee urged the State party to conduct a proper, impartial and independent investigation in order to bring to justice those responsible for the complainant's treatment, to provide the complainant with redress and fair and adequate reparation for the suffering inflicted, including compensation and full rehabilitation, and to prevent similar violations in the future.

On 22 January 2014, the State party submitted that, on 16 June 2009, a jury of the Astana City Court had found the complainant guilty under articles 96 (2), 179 (3) and 185 (2) of the Criminal Code. The complainant was sentenced to life imprisonment, to be

served in a colony with a special regime. On 10 November 2009, the Supreme Court upheld the decision of the court of first instance and rejected the complainant's appeal. The complainant's guilt was established on the basis of a multitude of corroborating pieces of evidence collected during the preliminary investigation, assessed in court and recognized as lawfully obtained, and the sentence imposed was commensurate with the gravity of the offence and the personality of the convict. It was established that, on 8 December 2008, the complainant had been extradited from the Russian Federation to Kazakhstan. Upon arrival he personally wrote a confession to the Prosecutor of Astana. His testimony was verified in the presence of his lawyer, he confessed his guilt and showed where and how he had committed the murder.

On 9 December 2008, a medical examination of the complainant was conducted, which revealed old scars on his right wrist and certain bruises. On 10 December 2008, the complainant changed his testimony and started claiming that he had not committed murder but that he had confessed under torture. On 10 December 2008, another medical examination of the complainant took place, which found some additional light injuries. The State party argues that the above-mentioned injuries were sustained after 5 p.m. on 9 December 2008, after he had already confessed. On 21 December 2008, an ex officio verification was conducted, which concluded that the complainant's injuries were self-inflicted (he hit his head by accident when getting into a police vehicle). The State party also submits that the complainant was examined several more times, that no other injuries were detected on him and that he changed his testimony again, confessing to committing murder. In his allegation regarding torture the complainant never indicated concretely how and by whom he had been tortured. During the appellate review of the verdict the prosecution and the court reviewed, together with the rest of the evidence, the complainant's arguments that he had been tortured. No objective evidence of torture had ever been found. Furthermore, the Internal Security Division of the Department of Internal Affairs of Astana had investigated his allegations and, by a decision dated 8 June 2009, had refused to initiate criminal proceedings against the officers, not finding that any crime had been committed.

The State party concludes that no violation of the complainant's rights has taken place.

The State party's submission has been transmitted to the complainant for comments.

Committee's decision: To keep the follow-up dialogue open.

State party	**Norway**
Case	***Eftekhary*, 312/2006**
Decision adopted on	25 November 2011
Violation	Article 3 (deportation to the Islamic Republic of Iran)
Remedy recommended	The Committee asked the State party not to expel the complainant.
Previous follow-up information	A/68/44, chap. VI

On 14 May 2013, the State party informed the Committee that the complainant's case had been scheduled for a new review by the Immigration Appeals Board, but the complainant had failed to appear at the hearing and it could not take place.

The State party recalls that in paragraph 7.8 of the decision, the Committee noted the State party's submission that the court documents presented in support of the asylum application were not authentic, in accordance with a verification conducted by the Norwegian Embassy in Tehran, and that the Committee was not in a position to assess the verification of the court documents regarding the alleged sentence in absentia to five years' imprisonment. The State party also refers to the Committee's finding in paragraph 7.9 of the decision that "the two summons for the complainant to appear before the Revolutionary Court have not been contested, and that these summons, combined with the fact that the complainant did not appear before the Revolutionary Court in Tehran at the time that he was summoned, in themselves constitute an element of high risk to the complainant". The State party points out that the summons in question had also been found to be false in accordance with a verification conducted by the Norwegian Embassy in Tehran, and that this had been communicated to the Committee through a letter dated 16 October 2007 from the Norwegian Attorney General. The State party expresses concern about the impact that this might have had on the decision of the case. Nevertheless, "due to Norway's respect for the important role of the Committee", the State party submits that the Ministry of Justice and Public Security will exercise its option to instruct the Immigration Appeals Board in this case to give the complainant a residence permit on humanitarian grounds.

The State party's observations had been transmitted to the complainant for comments on 4 June 2013. However the letter was returned and it appears that the complainant no longer resides at the address on file. (The previous three letters sent to the complainant were also returned; the complainant dismissed his counsel in 2008 and the secretariat has no means to discover the current whereabouts of the complainant.)

On 15 April 2014, the secretariat sent to the State party a letter requesting an update on the complainant's situation and inquiring whether he had received a residence permit.

Committee's decision: To keep the follow-up dialogue open.

State party	**Serbia**
Case	***Ristic*, 113/1998**
Decision adopted on	11 May 2001
Violation	Articles 12 and 13
Remedy recommended	The Committee urged the State party to investigate allegations of torture by police.
Previous follow-up information	A/66/44, chap. VI, A/67/44, chap. VI and A/68/44, chap. VI

On 19 April 2013, the State party informed the Committee that in December 2004 the First Municipal Court of Belgrade had issued a judgement holding the Republic of Serbia and the State Union of Serbia and Montenegro jointly liable to pay Radivoje and Vesna Ristic 500,000 dinars each for non-pecuniary damages. The Republic of Serbia paid the above amount to Mr. and Ms. Ristic on 7 February 2006 with interest calculated from 30 December 2004.

The State party's submission was transmitted to counsel for comments. To date no response has been received by the secretariat. A reminder was sent in October 2013.

Committee's decision: To keep the follow-up dialogue open.

State party	Serbia
Case	***Dimitrov*, 171/2000**
Decision adopted on	3 May 2005
Violation	Article 2, paragraph 1, in connection with articles 1, 12, 13 and 14
Remedy recommended	The Committee urged the State party to conduct a proper investigation into the facts alleged by the complainant.
Previous follow-up information	A/66/44, chap. VI, A/67/44, chap. VI and A/68/44, chap. VI

On 19 April 2013, the State party informed the Committee that on 7 July 2010, Jovica Dimitrov had filed a claim against the Republic of Serbia in the First Instance Court of Belgrade for non-pecuniary damages. On 20 October 2011 an agreement between Mr. Dimitrov and the State party was signed, by which the State party agreed to pay compensation of 450,000 dinars for having violated the complainant's rights under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The payment was made on 30 November 2011; on 14 December 2011 Mr. Dimitrov withdrew his court claim. The court discontinued the case on 28 December 2011.

The State party's submission was transmitted to counsel for comments. To date no response has been received by the secretariat. A reminder was sent in October 2013.

Committee's decision: To keep the follow-up dialogue open.

State party	Serbia
Case	***Dimitrijevic*, 172/2000**
Decision adopted on	16 November 2005
Violation	Article 2, paragraph 1, in connection with articles 1, 12, 13 and 14
Remedy recommended	The Committee urged the State party to prosecute those responsible for the violations found and to provide compensation to the complainant.
Previous follow-up information	A/66/44, chap. VI, A/67/44, chap. VI and A/68/44, chap. VI

On 30 May 2013, the counsel for the complainant submitted that, as late as in July 2007, the Office of the Municipal Public Prosecutor in Novi Sad had informed Danilo Dimitrijevic that the criminal complaint that he had filed on 27 November 1997 had been dismissed "because there was no reasonable suspicion that a criminal offence has been committed". By dismissing the complainant's complaint, the Office of the Municipal Public Prosecutor failed to implement the recommendation of the Committee. On 17 October 2007, the Humanitarian Law Center filed, on behalf of Mr. Dimitrijevic, a compensation claim with the Serbian Public Attorney's Office for the violation of his rights caused by the unlawful actions of State institutions, and enclosed the decision of the

Committee against Torture. The Public Attorney's Office offered 250,000 dinars for damages and Mr. Dimitrijevic accepted the offer.

The counsel's submission was transmitted to the State party for comments with a deadline of 3 July 2013. To date no response has been received. A reminder was sent in October 2013.

Committee's decision: Given the payment of compensation in this case and the fact that the case is quite old, the Committee decides to close the case with a note of partially satisfactory resolution.

State party	**Serbia**
Case	***Nikolic*, 174/2000**
Decision adopted on	24 November 2005
Violation	Articles 12 and 13
Remedy recommended	Conduct of an investigation of the circumstances of the death of the complainants' son ("the Committee wishes to receive from the State party, within 90 days, information … in particular on the initiation and the results of an impartial investigation of the circumstances of the death of the complainants' son").
Previous follow-up information	A/66/44, chap. VI, A/67/44, chap. VI and A/68/44, chap. VI

On 30 May 2013, the counsel for the complainant submitted that on 2 March 2006 the Serbian Minister of Justice, in a letter, had requested the Office of the District Public Prosecutor in Belgrade to initiate "an appropriate procedure for determining the circumstances of the death of Nikola Nikolic" in compliance with the Convention and the Criminal Procedure Code of the Republic of Serbia. On 12 April 2006, the Prosecutor's Office requested that the investigating magistrate of the Belgrade District Court carry out an action as a part of the investigation: to order a new forensic expertise to determine the exact cause of death of the victim. On 11 May 2006, the Belgrade District Court dismissed the request as ill-founded, considering that the cause of death had been sufficiently clarified by the forensic expert opinions rendered on 22 November 1994 and 27 November 1996. On 27 December 2007, the Deputy Public Prosecutor of the Republic filed with the Supreme Court of Serbia a request for protection of legality (an extraordinary legal remedy available after a case has become finally adjudicated) against all the decisions that had been delivered by the Belgrade District Court and by the Supreme Court of Serbia before the Committee against Torture decision was issued. On 14 November 2008, the Supreme Court rejected the request as ill-founded.

In June 2006, the parents of the victim filed a civil suit against the Republic of Serbia, seeking compensation for non-pecuniary damage suffered as a result of the death of a close family member. No decision in this case has been delivered to date. A further request of the parents that the victim's body be exhumed for a new forensic examination has also been declined by the court, which instead sent the 1994 and 1996 autopsy reports to different medical forensic institutes in attempts to obtain an expert opinion. No such opinion had been presented to the family to date.

The counsel submits that by acting in such a manner the courts have failed to conduct an impartial investigation into the incident and therefore have failed to implement the decision of the Committee. The counsel also submits that the drawn-out civil law suit for compensation, which has gone on for seven years so far, amounts to a violation of the complainants' right to a fair trial and is an effective denial of their right to obtain compensation.

The counsel's submission was transmitted to the State party for comments with a deadline of 3 July 2013. By that date no response had been received. A reminder was sent in October 2013.

On 4 December 2013, the State party submitted that in November 2008 it had paid compensation to the parents and the sister of the victim for the emotional anguish suffered owing to the death of their close family member, in the amount of 1,645,145 dinars, and that the discussion on the amount of "tangible damages" was still ongoing. The State party also submitted that a "request for the protection of legality", given the serious violations of the Criminal Code provisions, had been filed by two of the complainants with the Supreme Court of Serbia on 27 December 2007, against the decisions of the Belgrade District Court of 17 February 1998 and 11 May 2006, and the Supreme Court's decision of 12 December 2001. On 11 November 2008, the Supreme Court rejected the said request for protection.

The State party's submission was transmitted to the counsel for comments with a deadline of 6 February 2014. No response has been received to date.

Committee's decision: Given the payment of compensation in this case and the fact that the case is quite old, the Committee decided to suspend the case with a note of partially satisfactory resolution.

State party	**Tunisia**
Case	***Ben Salem*, 269/2005**
Decision adopted on	7 November 2007
Violation	Articles 1, 12, 13 and 14
Remedy recommended	The Committee urged the State party to conclude the investigation into the alleged acts of torture inflicted on the complainant, with a view to bringing those responsible to justice
Previous follow-up information	A/66/44, chap. VI and A/67/44, chap. VI

On 23 May 2013, the State party submitted that Ali Ben Salem had alleged that he had been the subject of a violent attack on 26 April 2000 while accompanied by Jalal Ben Yazbek Alzoglami, Siham Ben Sedreen and Altayeb Alneaman. As a result, the complainant was rushed to Charles Nicolle Hospital, where he was kept under medical observation for 24 hours. He was diagnosed with mild fractures in his arms and an injury in his lower back.

The complainant filed a complaint of attempted murder, torture and ill-treatment against public officials. He was requested on 8 Sept 2000 to submit a medical document. Thereafter the case was directed to the Tunis District Director for investigation. Over the course of that investigation it was revealed that another investigation, No. 147, had been launched on 26 April 2000 concerning an assembly attempt in a public area and the disruption of traffic by the above-mentioned Mr. Alzoglami, who had also scolded a police officer on that occasion.

On 11 and 12 July 2002, testimonies were taken from a police inspector, Njeeb Alsaidawi, and the Police Chief, Ali Alfahri, respectively (the alleged perpetrators of the violent attack).

On 5 May 2003, the Attorney General requested the Tunis District Director to invite the complainant for further investigation, also with the aim of collecting witnesses' details. However, it was not possible to ascertain the complainant's whereabouts; therefore, a confrontation between the complainant and the police officers allegedly implicated in the violent attack could not take place.

It was thus decided on 12 June 2003 to retain the case for insufficient evidence.

The case was reopened following an appeal submitted by the Prosecutor on 11 April 2007, and assigned to an investigation judge.

On 30 April 2007 the complainant was invited to deliver his testimony in front of the investigating judge. He refused to do so in the absence of his lawyer, even though he was advised that a lawyer's presence was not a prerequisite since he — the complainant — was only a witness.

On 17 October 2007 the investigating judge heard testimonies from the alleged perpetrators, and on 7 January 2008 testimonies were heard from three other police officials.

On 8 January 2008, the investigating judge met with the complainant, who submitted a medical document. The investigating judge also requested a copy of the complainant's medical file from Charles Nicolle Hospital.

Invitations to testify were sent between April 2007 and Jan 2008 by the investigating judge to both witnesses, Ms. Ben Sedreen and Mr. Alneaman, but they never presented themselves. The investigation is still ongoing.

The State party's submission was transmitted to the complainant for comments with a deadline of 19 August 2013. Since no comments had been received, a reminder was issued in October 2013.

On 22 November 2013, the counsel for the complainant (the World Organisation Against Torture, OMCT) put forward that it had been in regular contact with Mr. Ben Salem and that he sought effective implementation of the Committee's decision. The organization recalls that, after its mission to Tunisia and a meeting with the Prime Minister of Tunisia in May 2011, the State party had committed itself to complying with the Committee's decision as promptly as possible. The Committee was informed of the commitment undertaken by the State party through an OMCT letter dated 28 July 2011.

Contrary to the State party claim that investigations into the complainant's case continue, OMCT submits that the last action taken in the case dates from 5 February 2008 and that, until now, the complainant's defence lawyers have not had access to copies of the case files.

OMCT expresses its regret that the dialogue started in 2011 has been interrupted by the State party, and requests the Committee to invite the State party to resume dialogue with a view to the effective implementation of the decision concerning complaint No. 269/2005.

On 23 January 2014, the State party submitted a letter largely reiterating its submission of 23 May 2013. It further submits that an investigating judge heard the complainant together with his lawyer and some security agents, and that a medical report which the investigating judge ordered from Charles Nicolle Hospital was delivered on 5 February 2008. The State party further provides a general description of its torture prevention measures, not specifically related to complaint No. 296/2005.

Committee's decision: To keep the follow up dialogue open.

State party	**Tunisia**
Case	***Ali*, 291/2006**
Decision adopted on	21 November 2008
Violation	Articles 1, 12, 13 and 14
Remedy recommended	The Committee urged the State party to conclude the investigation into the alleged acts of torture inflicted on the complainant, with a view to bringing those responsible to justice.
Previous follow-up information	A/66/44, chap. VI, A/67/44, chap. VI and A/68/44, chap. VI

On 6 May 2013, the counsel for the complainant (OMCT) expressed its regret regarding the observations made by the Government of Tunisia concerning the investigation of the complaint. In May 2011, the State started a dialogue with OMCT and committed itself to promptly give effect to the Committee's decisions; nevertheless, in a letter dated 14 February 2013, the State invoked the exact same arguments as the ones already put forward on 26 February 2009. Thus, OMCT expresses its regret that the dialogue initiated has not been followed and that the State has failed to respect its commitments.

The counsel's comments were transmitted to the State party with a deadline of 27 June 2013. No reply was received by that date. A reminder was sent to the State party in October 2013.

On 10 December 2013, the State party submitted that the complainant in this case had been heard by an investigating judge at the magistrate's court in Tunis, and that she had testified about the attack and the incident of ill-treatment she had allegedly been subjected to by security agents. The complainant had been convicted of disrespecting/humiliating a public officer, and given a sentence of two months' imprisonment, which was postponed. The investigating judge also heard security agents' testimonies concerning her complaint; they all denied involvement in any attack against the complainant. On 6 February 2009, the investigating judge terminated the case for lack of evidence. The State party submits that the decision is not final. According to the Criminal Procedure Code of Tunisia, the complainant can request the general prosecution to reopen the investigation of the case if she has obtained new evidence that was not available at the time of the previous investigation. Furthermore, it coordinates with local and international interlocutors with a view to putting an end to torture and ill-treatment.

On 1 April 2014, the counsel for the complainant (OMCT) submitted that that it had been in regular contact with the complainant and that she sought effective implementation of the Committee's decision. It notes that the State party in its submission refers to an investigation that took place before the regime change, and maintains that the above-mentioned investigation was not independent or impartial and suffered from numerous shortcomings. It is essential to review the position of the previous Government. The organization recalls that, after its mission to Tunisia and its meeting with the Prime Minister of Tunisia in May 2011, the State party had committed itself to complying with the Committee's decision as promptly as possible. The Committee was informed of the commitment undertaken by the State party through an OMCT letter dated 28 July 2011. OMCT expresses its regret that the State party has not honoured its commitments and that the dialogue started in 2011 has been interrupted. OMCT requests the Committee to invite the State party to resume dialogue with a view to the effective implementation of the decision concerning complaint No. 291/2006.

The counsel's submission has been transmitted to the State party with a request to comment.

Committee's decision: To keep the follow-up dialogue open.

State party	**Ukraine**
Case	***Slyusar*, 353/2008**
Decision adopted on	14 November 2011
Violation	Articles 1, 2, 12, 13 and 14
Remedy recommended	The Committee asked the State party to take the necessary steps to give effect to the Committee's decision.

On 13 May 2013, the secretariat sent a reminder to the State party about submitting its observations on the complainant's information dated 7 January 2013.

By note verbale of 15 May 2013, the State party submitted its follow-up reply to the Committee's decision.

Regarding the individual measures concerning the complainant, the State party indicates that, according to the information of the General Prosecutor's Office of November 2012, the issue of unlawful acts by the officials of the Solomyanskiy District Department of the Ministry of Internal Affairs and the issue regarding the grounds for the refusal to have a criminal case opened against those officials have been examined on numerous occasions by both the Kiev Prosecutor's Office and the General Prosecutor's Office.

At the end of those examinations, the General Prosecutor's Office did not reveal any grounds for annulling the decisions adopted previously, including the decision not to open a criminal case. The complainant has been duly notified by the General Prosecutor's Office of those conclusions (by letters of 15 May 2012, 26 June 2012 and 17 August 2012).

The State party explains that the Criminal Procedure Code, which entered into force on 20 November 2012, introduced a range of novelties, which would contribute to the protection of human rights and the prohibition of torture in particular.

The safeguards regarding suspects and the accused have been reinforced. The deadlines governing the conduct of pretrial investigations were shortened, and an investigation would be considered open from the moment of its inclusion in the unified registry of pretrial investigations. That will limit the occurrence of human rights violations, prevent groundless investigations against individuals, enable investigations to be conducted within a reasonable time, and contribute to the increased responsibility of the officials. The new code also provides an optimized mechanism for the choice of custody as a restraint measure: in every case, the prosecutors will have to present grounded requests as to the need to opt for custody as a restraint measure to be imposed, as it constitutes an extraordinary measure.

The pretrial investigation is being revisited as well. The existing pretrial inquiry (*doznanie*) and investigation have been merged into a single pretrial investigation. Investigations now start from the moment of the inclusion of the case in the unified registry. Thus, the previously existing requirement for a formal ruling on the opening of criminal cases has been eliminated, and criminal investigations are less formalistic.

The guarantees against the use of torture will increase. The new code requires judges, at all stages of the court proceedings, to investigate the allegations of violence used against individuals during their apprehension or in detention, and to take the necessary measures to ensure the safety of those concerned pursuant to the law. In addition, if the appearance or the status of the person, or other circumstances known by the investigative judge, result in the existence of reasonable doubt about a violation of the law during the arrest or in detention, the judge must ensure that a medical-forensic examination of the person is conducted immediately, and must order an investigation and take appropriate steps under the law.

The State party adds that the new code does not contain provisions on acknowledgment of guilt (*yavka s povinnoi*), which would help prevent situations in which individuals are arrested and questioned ostensibly for administrative offences but in reality with the aim of obtaining their confessions in crimes prior to being charged with the corresponding crime within criminal proceedings once such confessions have been obtained. In addition, this would limit attempts to obtain forced confessions.

The admissibility of evidence is also clarified in the new code. Regarding the particularly serious crimes, representation by a lawyer is compulsory for those concerned. The suspects/accused may refuse to be represented by a lawyer, but their refusal must be made in the presence of the lawyer after the lawyer has had an opportunity to communicate in private with the suspect/accused; such refusals must be recorded duly. In certain cases, the presence of a lawyer is compulsory under the law and no exception is possible.

The new code also provides that evidence obtained through substantive violations of the rights and freedoms of the individuals that are guaranteed by the Constitution, the country's laws and the international treaties to which the State is a party, and other evidence obtained through information obtained by substantive violations of human rights and freedoms, are impermissible.

Regarding the activities of the General Prosecutor's Office, the new Code is aimed in particular at solving the previously existing conflict of interest, as prosecutors were involved in criminal cases as agents of investigation, control and prosecution at the same time. Under the new code, prosecutors can only investigate cases regarding judges, high-ranked officials and law-enforcement officials. Such cases must be registered and investigated immediately after the receipt of a complaint.

In April 2012, a new Ombudsperson was elected. Together with representatives of the Council of Europe, the Ombudsperson prepared a draft law modifying the existing Law on the Ombudsperson. The new law was adopted on 2 October 2012. The main change is that the Office of the Ombudsperson serves also as the national preventive mechanism for the purposes of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. A specific department on the national preventive mechanism is being created within the Office of the Ombudsperson.

On 21 June 2013, the complainant submitted comments on the State party's submission of 15 May 2013. He notes the State party's submission that the issues of unlawful acts by the officials of the Solomyanskiy District Department of the Ministry of Internal Affairs and the issue regarding the grounds for the refusal to have a criminal case opened against those officials have been examined on numerous occasions by the prosecutors' offices and that no grounds were found to annul the decisions adopted previously, including the decision not to open a criminal case. He reiterates that he strongly disagrees with that position, maintaining that no thorough investigation of the case and no proper analysis of the facts were ever conducted. He submits that, according to article 214 of the new Criminal Procedure Code, information about any event indicating "signs of a crime" that is communicated to the police or prosecutors must be entered into a unified register of pretrial investigations and proceedings. On 18 December 2012 the complainant was informed that his complaint had been included in that register, and on 19 January 2013 he was informed that the proceedings had been closed. The complainant expresses doubts that during that month any investigative action took place. He submits that he has no indication that even a bare minimum — such as questioning of the police officers — was conducted, and concludes that the proceedings were closed without any real action to investigate the crime of torture. He appealed the decision several times to superior prosecutors, but his appeals have been forwarded from one office to another and to date no decision on those appeals has been taken.

The complainant maintains that it is obvious that torture occurred, evidenced by the fact that on 17 February he did not have any injuries, but on 28 February a medical expert certified that he had multiple injuries estimated to be from 5 to 12 days old, and that during that time he had been detained in Solomyanskiy Police Station. He further reiterates the content of the Committee's decision on his case, which found that he had been subjected to torture and that the State party had violated articles 1, 2 (para. 1), 12, 13 and 14 of the Convention. He reiterates that acts of torture by police officers remain unpunished.

The complainant's submission was transmitted to the State party for observations with a deadline of 15 August 2013. On 20 September 2013, the secretariat sent a reminder to the State party to provide comments by 15 October 2013.

On 15 April 2014, the secretariat sent a second reminder to the State party to submit comments on the counsel's submission of 21 June 2013, with a warning that if no information is received, the Committee may decide to close the follow-up dialogue with a finding of unsatisfactory resolution.

Committee's decision: To keep the follow up dialogue open.

VII. Future meetings of the Committee

151. In accordance with rule 2 of its rules of procedure, the Committee holds two regular sessions each year. In consultation with the Secretary-General, the Committee took a decision on the dates of its next regular session the fifty-third session will be held from 3 to 28 November 2014.

152. Further to General Assembly resolution 68/268 on strengthening and enhancing the effective functioning of the human rights treaty body system, the Committee will hold three regular sessions in 2015. The dates of those sessions have not yet been set; they will be decided in consultation with the Secretary-General of the United Nations, taking into account the calendar of conferences as approved by the General Assembly.

Fifty-fourth	The exact dates of the spring session have yet to be decided.
Fifty-fifth	The exact dates of the summer session have yet to be decided.
Fifty-sixth	The exact dates of the autumn session have yet to be decided.

Additional meeting time from 2015

153. The Committee reiterated its appreciation for General Assembly resolution 68/268, pursuant to which the Committee will be provided with 5.6 additional weeks of meeting time, for a total of 11.6 weeks per year.

VIII. Adoption of the annual report of the Committee on its activities

154. In accordance with article 24 of the Convention, the Committee shall submit an annual report on its activities to the States parties and to the General Assembly. Since the Committee holds its second regular session of each calendar year in November, which coincides with the regular sessions of the General Assembly, it adopts its annual report at the end of its spring session, for transmission to the General Assembly during the same calendar year. Accordingly, at its 1248th meeting, held on 23 May 2014, the Committee considered and unanimously adopted the report on its activities at the fifty-first and fifty-second sessions.

Annexes

Annex I

States that have signed, ratified or acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as at 23 May 2014

State	*Signature*	*Ratification, accession, succession*
Afghanistan	4 February 1985	1 April 1987
Albania		11 May 1994[a]
Algeria	26 November 1985	12 September 1989
Andorra	5 August 2002	22 September 2006
Angola	24 September 2013	
Antigua and Barbuda		19 July 1993[a]
Argentina	4 February 1985	24 September 1986
Armenia		13 September 1993[a]
Australia	10 December 1985	8 August 1989
Austria	14 March 1985	29 July 1987
Azerbaijan		16 August 1996[a]
Bahamas	16 December 2008	
Bahrain		6 March 1998[a]
Bangladesh		5 October 1998[a]
Belarus	19 December 1985	13 March 1987
Belgium	4 February 1985	25 June 1999
Belize		17 March 1986[a]
Benin		12 March 1992[a]
Bolivia (Plurinational State of)	4 February 1985	12 April 1999
Bosnia and Herzegovina		1 September 1993[b]
Botswana	8 September 2000	8 September 2000
Brazil	23 September 1985	28 September 1989
Bulgaria	10 June 1986	16 December 1986

State	*Signature*	*Ratification, accession, succession*
Burkina Faso		4 January 1999[a]
Burundi		18 February 1993[a]
Cabo Verde		4 June 1992[a]
Cambodia		15 October 1992[a]
Cameroon		19 December 1986[a]
Canada	23 August 1985	24 June 1987
Chad		9 June 1995[a]
Chile	23 September 1987	30 September 1988
China	12 December 1986	4 October 1988
Colombia	10 April 1985	8 December 1987
Comoros	22 September 2000	
Congo		30 July 2003[a]
Costa Rica	4 February 1985	11 November 1993
Côte d'Ivoire		18 December 1995[a]
Croatia		12 October 1992[b]
Cuba	27 January 1986	17 May 1995
Cyprus	9 October 1985	18 July 1991
Czech Republic		22 February 1993[b]
Democratic Republic of the Congo		18 March 1996[a]
Denmark	4 February 1985	27 May 1987
Djibouti		5 November 2002[a]
Dominican Republic	4 February 1985	24 January 2012
Ecuador	4 February 1985	30 March 1988
Egypt		25 June 1986[a]
El Salvador		17 June 1996[a]
Equatorial Guinea		8 October 2002[a]
Estonia		21 October 1991[a]
Ethiopia		14 March 1994[a]
Finland	4 February 1985	30 August 1989
France	4 February 1985	18 February 1986

State	*Signature*	*Ratification, accession, succession*
Gabon	21 January 1986	8 September 2000
Gambia	23 October 1985	
Georgia		26 October 1994[a]
Germany	13 October 1986	1 October 1990
Ghana	7 September 2000	7 September 2000
Greece	4 February 1985	6 October 1988
Guatemala		5 January 1990[a]
Guinea	30 May 1986	10 October 1989
Guinea-Bissau	12 September 2000	24 September 2013
Guyana	25 January 1988	19 May 1988
Haiti	16 August 2013	
Holy See		26 June 2002[a]
Honduras		5 December 1996[a]
Hungary	28 November 1986	15 April 1987
Iceland	4 February 1985	23 October 1996
India	14 October 1997	
Indonesia	23 October 1985	28 October 1998
Iraq		7 July 2011[a]
Ireland	28 September 1992	11 April 2002
Israel	22 October 1986	3 October 1991
Italy	4 February 1985	12 January 1989
Japan		29 June 1999[a]
Jordan		13 November 1991[a]
Kazakhstan		26 August 1998[a]
Kenya		21 February 1997[a]
Kuwait		8 March 1996[a]
Kyrgyzstan		5 September 1997[a]
Latvia		14 April 1992[a]
Lao People's Democratic Republic	21 September 2010	26 September 2012
Lebanon		5 October 2000[a]

State	*Signature*	*Ratification, accession, succession*
Lesotho		12 November 2001[a]
Liberia		22 September 2004[a]
Libya		16 May 1989[a]
Liechtenstein	27 June 1985	2 November 1990
Lithuania		1 February 1996[a]
Luxembourg	22 February 1985	29 September 1987
Madagascar	1 October 2001	13 December 2005
Malawi		11 June 1996[a]
Maldives		20 April 2004[a]
Mali		26 February 1999[a]
Malta		13 September 1990[a]
Mauritania		17 November 2004[a]
Mauritius		9 December 1992[a]
Mexico	18 March 1985	23 January 1986
Monaco		6 December 1991[a]
Mongolia		24 January 2002[a]
Montenegro		23 October 2006[b]
Morocco	8 January 1986	21 June 1993
Mozambique		14 September 1999[a]
Namibia		28 November 1994[a]
Nauru	12 November 2001	26 September 2012
Nepal		14 May 1991[a]
Netherlands	4 February 1985	21 December 1988
New Zealand	14 January 1986	10 December 1989
Nicaragua	15 April 1985	5 July 2005
Niger		5 October 1998[a]
Nigeria	28 July 1988	28 June 2001
Norway	4 February 1985	9 July 1986
Pakistan	17 April 2008	23 June 2010
Palau	20 September 2011	

State	*Signature*	*Ratification, accession, succession*
Panama	22 February 1985	24 August 1987
Paraguay	23 October 1989	12 March 1990
Peru	29 May 1985	7 July 1988
Philippines		18 June 1986[a]
Poland	13 January 1986	26 July 1989
Portugal	4 February 1985	9 February 1989
Qatar		11 January 2000[a]
Republic of Korea		9 January 1995[a]
Republic of Moldova		28 November 1995[a]
Romania		18 December 1990[a]
Russian Federation	10 December 1985	3 March 1987
Rwanda		15 December 2008[a]
Saint Vincent and the Grenadines		1 August 2001[a]
San Marino	18 September 2002	27 November 2006
Sao Tome and Principe	6 September 2000	
Saudi Arabia		23 September 1997[a]
Senegal	4 February 1985	21 August 1986
Serbia		12 March 2001[b]
Seychelles		5 May 1992[a]
Sierra Leone	18 March 1985	25 April 2001
Slovakia		28 May 1993[b]
Slovenia		16 July 1993[a]
Somalia		24 January 1990[a]
South Africa	29 January 1993	10 December 1998
Spain	4 February 1985	21 October 1987
Sri Lanka		3 January 1994[a]
State of Palestine		2 April 2014[a]
Sudan	4 June 1986	
Swaziland		26 March 2004[a]
Sweden	4 February 1985	8 January 1986

State	*Signature*	*Ratification, accession, succession*
Switzerland	4 February 1985	2 December 1986
Syrian Arab Republic		19 August 2004[a]
Tajikistan		11 January 1995[a]
Thailand		2 October 2007[a]
The former Yugoslav Republic of Macedonia		12 December 1994[b]
Timor-Leste		16 April 2003[a]
Togo	25 March 1987	18 November 1987
Tunisia	26 August 1987	23 September 1988
Turkey	25 January 1988	2 August 1988
Turkmenistan		25 June 1999[a]
Uganda		3 November 1986[a]
Ukraine	27 February 1986	24 February 1987
United Arab Emirates		19 July 2012[a]
United Kingdom of Great Britain and Northern Ireland	15 March 1985	8 December 1988
United States of America	18 April 1988	21 October 1994
Uruguay	4 February 1985	24 October 1986
Uzbekistan		28 September 1995[a]
Vanuatu		12 July 2011[a]
Venezuela (Bolivarian Republic of)	15 February 1985	29 July 1991
Viet Nam	7 November 2013	
Yemen		5 November 1991[a]
Zambia		7 October 1998[a]

Notes:

[a] Accession (77 States).

[b] Succession (7 States).

Annex II

States parties that have declared that they do not recognize the competence of the Committee provided for by article 20 of the Convention, as at 23 May 2014

Afghanistan

China

Equatorial Guinea

Israel

Kuwait

Lao People's Democratic Republic

Mauritania

Pakistan

Saudi Arabia

Syrian Arab Republic

United Arab Emirates

Annex III

States parties that have made the declarations provided for in articles 21 and 22 of the Convention, as at 23 May 2014[a, b]

State party	*Date of entry into force*
Algeria	12 October 1989
Andorra	22 November 2006
Argentina	26 June 1987
Australia	29 January 1993
Austria	28 August 1987
Belgium	25 July 1999
Bolivia (Plurinational State of)	14 February 2006
Bulgaria	12 June 1993
Cameroon	11 November 2000
Canada	13 November 1989
Chile	15 March 2004
Costa Rica	27 February 2002
Croatia	8 October 1991[c]
Cyprus	8 April 1993
Czech Republic	3 September 1996[c]
Denmark	26 June 1987
Ecuador	29 April 1988
Finland	29 September 1989
France	26 June 1987
Georgia	30 June 2005
Germany	19 October 2001
Ghana	7 October 2000
Greece	5 November 1988
Guinea-Bissau	24 September 2013
Hungary	13 September 1989
Iceland	22 November 1996

State party	*Date of entry into force*
Ireland	11 May 2002
Italy	10 October 1989
Kazakhstan	21 February 2008
Liechtenstein	2 December 1990
Luxembourg	29 October 1987
Malta	13 October 1990
Monaco	6 January 1992
Montenegro	23 October 2006[c]
Netherlands	20 January 1989
New Zealand	9 January 1990
Norway	26 June 1987
Paraguay	29 May 2002
Peru	28 October 2002
Poland	12 May 1993
Portugal	11 March 1989
Republic of Korea	9 November 2007
Republic of Moldova	2 September 2011
Russian Federation	1 October 1991
Senegal	16 October 1996
Serbia	12 March 2001[c]
Slovakia	17 March 1995[c]
Slovenia	15 August 1993
South Africa	10 December 1998
Spain	20 November 1987
Sweden	26 June 1987
Switzerland	26 June 1987
Togo	18 December 1987
Tunisia	23 October 1988
Turkey	1 September 1988
Ukraine	12 September 2003

State party	*Date of entry into force*
Uruguay	26 June 1987
Venezuela (Bolivarian Republic of)	26 April 1994

States parties that have only made the declaration provided for in article 21 of the Convention, as at 23 May 2014[a]

State party	*Date of entry into force*
Japan	29 June 1999
Uganda	19 December 2001
United Kingdom of Great Britain and Northern Ireland	8 December 1988
United States of America	21 October 1994

States parties that have only made the declaration provided for in article 22 of the Convention, as at 23 May 2014[b]

State party	*Date of entry into force*
Azerbaijan	4 February 2002
Bosnia and Herzegovina	4 June 2003
Brazil	26 June 2006
Burundi	10 June 2003
Guatemala	25 September 2003
Mexico	15 March 2002
Morocco	19 October 2006
Seychelles	6 August 2001

Notes:

[a] A total of 62 States parties have made the declaration under article 21.

[b] A total of 66 States parties have made the declaration under article 22.

[c] States parties that have made the declaration under articles 21 and 22 by succession.

Annex IV

Membership of the Committee against Torture, as at 23 May 2014

Name of member	*Country of nationality*	*Term expires on 31 December*
Ms. Essadia **Belmir** (Vice-Chairperson)	Morocco	2017
Mr. Alessio **Bruni**	Italy	2017
Mr. Satyabhooshun Gupt **Domah** (Rapporteur)	Mauritius	2015
Ms. Felice **Gaer** (Vice-Chairperson)	United States of America	2015
Mr. Abdoulaye **Gaye**	Senegal	2015
Mr. Claudio **Grossman** (Chairperson)	Chile	2015
Mr. Jens **Modvig**	Denmark	2017
Ms. Sapana **Pradhan-Malla**	Nepal	2017
Mr. George **Tugushi** (Vice-Chairperson)	Georgia	2015
Mr. Kening **Zhang**	China	2017

Annex V

States parties that have signed, ratified or acceded to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as at 23 May 2014

State party	*Signature, succession to signature*	*Ratification, accession, succession*
Albania		1 October 2003[a]
Angola	24 September 2013	
Argentina	30 April 2003	15 November 2004
Armenia		14 September 2006[a]
Australia	19 May 2009	
Austria	25 September 2003	4 December 2012
Azerbaijan	15 September 2005	28 January 2009
Belgium	24 October 2005	
Benin	24 February 2005	20 September 2006
Bolivia (Plurinational State of)	22 May 2006	23 May 2006
Bosnia and Herzegovina	7 December 2007	24 October 2008
Brazil	13 October 2003	12 January 2007
Bulgaria	22 September 2010	1 June 2011
Burkina Faso	21 September 2005	7 July 2010
Burundi		18 October 2013[a]
Cabo Verde	26 September 2011	
Cambodia	14 September 2005	30 March 2007
Cameroon	15 December 2009	
Chad	26 September 2012	
Chile	6 June 2005	12 December 2008
Congo	29 September 2008	
Costa Rica	4 February 2003	1 December 2005
Croatia	23 September 2003	25 April 2005
Cyprus	26 July 2004	29 April 2009

State party	*Signature, succession to signature*	*Ratification, accession, succession*
Czech Republic	13 September 2004	10 July 2006
Democratic Republic of the Congo		23 September 2010[a]
Denmark	26 June 2003	25 June 2004
Ecuador	24 May 2007	20 July 2010
Estonia	21 September 2004	18 December 2006
Finland	23 September 2003	
France	16 September 2005	11 November 2008
Gabon	15 December 2004	22 September 2010
Georgia		9 August 2005[a]
Germany	20 September 2006	4 December 2008
Ghana	6 November 2006	
Greece	3 March 2011	11 February 2014
Guatemala	25 September 2003	9 June 2008
Guinea	16 September 2005	
Guinea-Bissau	24 September 2013	
Honduras	8 December 2004	23 May 2006
Hungary		12 January 2012[a]
Iceland	24 September 2003	
Ireland	2 October 2007	
Italy	20 August 2003	3 April 2013
Kazakhstan	25 September 2007	22 October 2008
Kyrgyzstan		29 December 2008[a]
Lebanon		22 December 2008[a]
Liberia		22 September 2004[a]
Liechtenstein	24 June 2005	3 November 2006
Lithuania		20 January 2014[a]
Luxembourg	13 January 2005	19 May 2010
Madagascar	24 September 2003	
Maldives	14 September 2005	15 February 2006
Mali	19 January 2004	12 May 2005

State party	*Signature, succession to signature*	*Ratification, accession, succession*
Malta	24 September 2003	24 September 2003
Mauritania	27 September 2011	3 October 2012
Mauritius		21 June 2005[a]
Mexico	23 September 2003	11 April 2005
Mongolia	24 September 2013	
Montenegro	23 October 2006[b]	6 March 2009
Nauru		24 January 2013[a]
Netherlands	3 June 2005	28 September 2010
New Zealand	23 September 2003	14 March 2007
Nicaragua	14 March 2007	25 February 2009
Nigeria		27 July 2009[a]
Norway	24 September 2003	27 June 2013
Panama	22 September 2010	2 June 2011
Paraguay	22 September 2004	2 December 2005
Peru		14 September 2006[a]
Philippines		17 April 2012[a]
Poland	5 April 2004	14 September 2005
Portugal	15 February 2006	15 January 2013
Republic of Moldova	16 September 2005	24 July 2006
Romania	24 September 2003	2 July 2009
Senegal	4 February 2003	18 October 2006
Serbia	25 September 2003	26 September 2006
Sierra Leone	26 September 2003	
Slovenia		23 January 2007[a]
South Africa	20 September 2006	
Spain	13 April 2005	4 April 2006
Sweden	26 June 2003	14 September 2005
Switzerland	25 June 2004	24 September 2009
The former Yugoslav Republic of Macedonia	1 September 2006	13 February 2009

State party	*Signature, succession to signature*	*Ratification, accession, succession*
Timor-Leste	16 September 2005	
Togo	15 September 2005	20 July 2010
Tunisia		29 June 2011[a]
Turkey	14 September 2005	27 September 2011
Ukraine	23 September 2005	19 September 2006
United Kingdom of Great Britain and Northern Ireland	26 June 2003	10 December 2003
Uruguay	12 January 2004	8 December 2005
Venezuela (Bolivarian Republic of)	1 July 2011	
Zambia	27 September 2010	

Notes:

[a] Accession.

[b] Succession or succession to signature.

Annex VI

Membership of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2014

Name of member	*Country of nationality*	*Term expires on 31 December*
Ms. Mari **Amos**	Estonia	2014
Mr. Hans-Jörg Viktor **Bannwart**	Switzerland	2016
Mr. Arman **Danielyan**	Armenia	2014
Mr. Malcolm **Evans** (Chairperson)	United Kingdom of Great Britain and Northern Ireland	2016
Mr. Enrique Andrés **Font**	Argentina	2016
Mr. Emilio Ginés **Santidrián**	Spain	2014
Ms. Lowell Patria **Goddard**	New Zealand	2016
Ms. Suzanne **Jabbour** (Vice-Chairperson)	Lebanon	2016
Mr. Miloš **Janković**	Serbia	2016
Mr. Paul **Lam Shang Leen**	Mauritius	2016
Mr. Víctor **Madrigal-Borloz**	Costa Rica	2016
Mr. Petros **Michaelides**	Cyprus	2014
Ms. Aisha Shujune **Muhammad** (Vice-Chairperson)	Maldives	2014
Ms. Margarete **Osterfeld**	Germany	2016
Ms. June Caridad **Pagaduan Lopez**	Philippines	2016
Ms. Catherine **Paulet**	France	2014
Mr. Hans Draminsky **Petersen**	Denmark	2014
Ms. Maria Margarida E. **Pressburger**	Brazil	2016
Ms. Judith **Salgado**	Ecuador	2014
Mr. Miguel Sarre **Iguíniz**	Mexico	2014
Ms. Aneta **Stanchevska**	The former Yugoslav Republic of Macedonia	2014

Name of member	*Country of nationality*	*Term expires on 31 December*
Mr. Wilder Tayler **Souto** (Vice-Chairperson)	Uruguay	2014
Mr. Felipe Villavicencio **Terreros**	Peru	2014
Mr. Victor **Zaharia**	Republic of Moldova	2016
Mr. Fortuné Gaétan **Zongo** (Vice-Chairperson)	Burkina Faso	2014

Annex VII

Seventh annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (January–December 2013)*

Summary

The seventh annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment surveys the work of the Subcommittee during 2013.

Following a brief introduction, section II provides a factual update on developments relating to the Optional Protocol to the Convention against Torture system, including the increase in States parties and in designated national preventive mechanisms as well as details concerning the operation of the Special Fund established under the Optional Protocol.

Section III highlights areas of cooperation between the Subcommittee and other international and regional bodies and civil society, summarizing the work which they have undertaken together.

Section IV provides substantive information concerning developments in the Subcommittee's working practices

Section V sets out the Subcommittee's views on the relationship between torture prevention and corruption.

Section VI reflects on the Subcommittee's programme of work for 2014 and the practical challenges which need to be addressed if the work of the Subcommittee is to continue to develop and prosper.

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* The seventh annual report of the Subcommittee has been issued separately under symbol CAT/C/52/2.

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I. Introduction

1. Article 16, paragraph 3, of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter, "the Optional Protocol") stipulates that the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment shall present a public annual report on its activities to the Committee against Torture. Pursuant to that provision, a draft report covering the Subcommittee's activities from 1 January 2013 to 31 December 2013 was considered and adopted by the Subcommittee at its twenty-second session and will be presented to the Committee against Torture at the Committee's fifty-second session.

II. The year in review

A. Participation in the Optional Protocol system

2. As at 31 December 2013, 70 States were party to the Optional Protocol.[1] In 2013, five States ratified or acceded to the Optional Protocol: Portugal (15 January), Nauru (24 January), Italy (3 April), Norway (27 June) and Burundi (18 October).

3. The pattern of regional participation was as follows:

Africa	13
Asia and the Pacific	8
Eastern Europe	18
Latin American and Caribbean States	14
Western European and other States	17

4. The regional breakdown of the 20 signatory States was as follows:

Africa	11
Asia and the Pacific	2
Eastern Europe	0
Latin American and Caribbean States	1
Western European and Other States	6

B. Organizational and membership issues

5. During the reporting period (1 January–31 December 2013), the Subcommittee held three one-week sessions at the United Nations Office at Geneva: the nineteenth session (18–22 February), the twentieth session (17–21 June) and the twenty-first session (11–15 November).

6. The Subcommittee membership has changed during 2013.[2] On 25 October 2012, at the fourth Meeting of States Parties to the Optional Protocol, 12 members were elected to

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[1] For a list of States parties, see the Subcommittee website at www.ohchr.org/EN/HRBodies/OPCAT/Pages/OPCATIndex.aspx.

[2] For a list of members and the duration of their mandates, see the Subcommittee website.

fill the vacancies arising in respect of members whose terms of office expired on 31 December 2012. The terms of office of all the newly elected members commenced on 1 January 2013 and are for a period of four years, expiring on 31 December 2016. In conformity with the Subcommittee's rules of procedure, new members of the Subcommittee made a solemn declaration at the opening of its nineteenth session, before assuming their duties. During the course of the year, Christian Pross and Olivier Obrecht resigned their membership of the Subcommittee, on 30 October and 12 December 2013, respectively.

7. At its nineteenth session, the Subcommittee elected its Bureau for the period to February 2015. Malcolm Evans was elected Chairperson. The four elected Vice-Chairpersons and their areas of primary responsibility were: Suzanne Jabbour, National Preventive Mechanisms; Aisha Shujune Muhammad, Jurisprudence and Subcommittee Rapporteur; Wilder Tayler Souto, Visits; and Fortuné Gaétan Zongo, External Relations.

8. In its fifth annual report (CAT/C/48/3, para. 10), the Subcommittee had set out details of the system of regional focal points and national preventive mechanism (NPM) regional task forces which it had established. At its nineteenth session, the Subcommittee replaced that structure with a system of regional teams. The heads of regional teams are: Africa, Paul Lam Shang Leen; Asia and the Pacific, Lowell Goddard; Europe, Mari Amos; and Latin America, Judith Salgado Alvarez. The regional teams form a primary building block of the Subcommittee's work, examining the implementation of the Optional Protocol in the States parties in their region. They report back to the Subcommittee plenary, proposing recommendations where desirable. The regional teams also make recommendations to the plenary regarding the visiting programme for the forthcoming year, ensuring that the programme of universal visiting is established in a reasoned and participative manner in accordance with impartially applied strategic operational criteria.

9. The Subcommittee's permanent and ad hoc working groups met at each session during 2013. Further information on those meetings is provided in section IV below.

10. These developments reflect the Subcommittee's preference for meeting in subgroups and working groups, which facilitate discussion of a broader range of issues, in more depth, with greater focus and in a more inclusive fashion than would otherwise be possible.

C. Visits conducted during the reporting period

11. The Subcommittee carried out six official visits in 2013.

12. Three visits were undertaken in accordance with its mandate under article 11 (a) of the Optional Protocol, to New Zealand (29 April–8 May), Peru (10–20 September) and Gabon (3–12 December).

13. Two visits were undertaken in accordance with its mandate under articles 11 (b) and 12 of the Optional Protocol, to Germany (8–12 April) and Armenia (3–6 September).

14. One visit was undertaken in accordance with its mandate under article 13, paragraph 4, of the Optional Protocol, to Cambodia (9–13 December).

15. Further summary information on the above-mentioned visits is available in the press releases issued following each visit.

D. Dialogue arising from visits, including publication of the Subcommittee's reports by States parties and national preventive mechanisms

16. The substantive aspects of the dialogue arising from visits are governed by the rule of confidentiality. Reports are only made public with the consent of the State party or NPM concerned. At the end of 2013, the Subcommittee had transmitted a total of 28 visit reports to States parties and NPMs: 17 visit reports under article 11 (a) of the Optional Protocol, including 2 within the reporting period on Kyrgyzstan and New Zealand; 1 follow-up visit report under article 13, paragraph 4, of the Optional Protocol; and 10 reports arising from NPM advisory visits under articles 11 (b)[3] and 12 of the Optional Protocol, including 8 within the reporting period to the States parties and NPMs of Armenia, Germany, the Republic of Moldova and Senegal. A total of 12 Subcommittee visit reports have been made public following requests from the States parties under article 16, paragraph 2, of the Optional Protocol, or requests from the NPMs. Two reports arising from NPM advisory visits were made public following requests from the NPMs of the Republic of Moldova and Senegal within the reporting period and one report arising from a visit under article 11 (a) of the Optional Protocol was made public following a request from Argentina.

17. In conformity with established practice, recipients are requested to provide a reply to a visit report within six months of its transmittal, giving a full account of action taken to implement the recommendations it contains. At the end of 2013, the Subcommittee had received 11 replies from States parties to visit reports under article 11 (a) of the Optional Protocol. The replies from Argentina, Benin, Brazil, Mexico (2 replies), Paraguay and Sweden have been made public, while those from Bolivia (Plurinational State of), Lebanon, Mauritius and Ukraine remain confidential. The Subcommittee considers the replies from the following five States parties to be overdue: Cambodia, Honduras, Liberia, Maldives and Mali.

18. The Subcommittee now issues a confidential written response to all replies received. In 2013, it transmitted such a response to Brazil. All responses currently remain confidential.

19. The Subcommittee has conducted two visits under article 13, paragraph 4, of the Optional Protocol, to Cambodia and Paraguay. The visit to Cambodia took place within the reporting period. Both the report and the reply arising from the previous article 13, paragraph 4, visit to Paraguay have been made public at the request of that State party.

20. The Subcommittee has transmitted reports to the NPMs and to the States parties in the wake of its NPM advisory visits under articles 11 (b) and 12 of the Optional Protocol to Armenia, Germany, Honduras, the Republic of Moldova and Senegal, all of which took place within the current reporting period except for the visit to Honduras. All the reports transmitted to the States parties remain confidential. The reports transmitted to the NPMs of Germany, Honduras, the Republic of Moldova and Senegal are public, whilst the report to the NPM of Armenia is confidential. States party replies from Honduras, the Republic of Moldova and Senegal are currently outstanding.

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[3] Since the Subcommittee sends separate confidential reports to both the State party and the NPM following such visits, each visit generates two reports.

E. Developments concerning the establishment of national preventive mechanisms

21. Of the 70 States parties to the Optional Protocol, 46 have officially notified the Subcommittee of the designation of their NPMs, information concerning which is listed on the Subcommittee website.

22. Three official notifications of designation were transmitted to the Subcommittee in 2013, from Austria, Portugal and Tunisia.

23. Twenty-four States parties have not yet notified the Subcommittee of the designation of their NPMs. As at the end of 2013, the one-year deadline for the establishment of an NPM provided for under article 17 of the Optional Protocol had not expired for three States parties: Italy, Nauru and Norway. Furthermore, one State party, Bosnia and Herzegovina, has made a declaration under article 24 of the Optional Protocol permitting it to postpone designation for up to an additional two years. On 9 July 2012, Romania also made such a declaration. After due representations from the State party and consultation with the Subcommittee, the Committee against Torture extended the postponement for an additional two years at its forty-ninth session, in November 2012. During its fiftieth session, on 13 May 2013, the Committee met in public session with Romania in order to learn more about the measures being taken to establish the NPM. The Subcommittee regrets that a lack of funding prevented any of its members from participating in that meeting, but it was pleased to be represented by the Secretary of the Subcommittee, who emphasized that the Subcommittee stood ready to assist the Romanian authorities as they established the NPM, in accordance with its mandate under the Optional Protocol, and drew attention to the Subcommittee's guidelines on national preventive mechanisms (CAT/OP/12/5). On 3 July 2013, Romania informed the Subcommittee of its action plan for establishing an NPM. During its twenty-first session, the Subcommittee held a follow-up meeting with the Permanent Mission of Romania, with the participation of members of the Committee against Torture.

24. As at 31 December 2013, therefore, 20 States parties had not formally complied with their obligations under article 17 of the Optional Protocol. Whilst this marks an improvement in the overall position compared to 2012, it remains a matter of major concern. At each Subcommittee session, the regional teams review progress towards the fulfilment of each State party's obligation, making appropriate recommendations to the plenary on how the Subcommittee can best advise and assist the States parties concerned, in accordance with its mandate under article 11 (b) (i) of the Optional Protocol. It must, however, be noted that the Subcommittee understands that a number of States parties have in fact designated NPMs, but have not officially communicated that information to the Subcommittee. The actual position is therefore somewhat better than the figures suggest.

25. The Subcommittee has continued the practice of engaging in dialogue with States parties at its sessions concerning the designation or functioning of their NPMs. At its nineteenth session, the Subcommittee held such meetings with the permanent missions of Bosnia and Herzegovina, Brazil and Sweden. At its twentieth session, it held similar meetings with the permanent missions of Benin, Guatemala and Tunisia, and at its twenty-first session, with the permanent missions of Romania and Turkey. Members of the Subcommittee are also in contact with other States parties who are in the process of establishing their NPMs.

26. The Subcommittee has also established and maintained contact with NPMs themselves, in fulfilment of its mandate under article 11 (b) (ii) of the Optional Protocol. At its twentieth session, the Subcommittee met with the NPM of the United Kingdom of Great Britain and Northern Ireland in order to learn more about its work and exchange

information and experiences. At its twenty-first session, the Subcommittee met with the NPM of Kyrgyzstan. The Subcommittee is also pleased to have received the annual reports of 32 NPMs during 2013. They have been posted on the Subcommittee website and reviewed by the regional teams.

27. The Subcommittee and its members have continued to receive invitations to attend numerous national, regional and international meetings on the designation, establishment and development of NPMs in particular and on the Optional Protocol in general. Those events have included:

(a) In January 2013, initial conversations about the work of the United Kingdom NPM and informal visits to a place of detention in London chosen by the United Kingdom NPM, in parallel with an Optional Protocol-related event organized by the Open Society Justice Initiative and the Human Rights Implementation Centre at the University of Bristol;

(b) In February 2013, a meeting organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Astana with the Kyrgyz Ombudsman, the Chair and members of the parliamentary committee responsible for the law on the NPM, the Deputy Chief of Staff of the Executive Office and the Minister for Human Rights in the Ministry of Foreign Affairs to discuss the proposed legislation providing for the NPM;

(c) In February 2013, a workshop in Algiers on torture prevention, organized by the Association for the Prevention of Torture (APT);

(d) In March 2013, a workshop in Manila on guidelines on health-care assessment in detention centres, organized by the Medical Action Group;

(e) In March 2013, a meeting in Belgrade with the NPMs of Albania, Bosnia and Herzegovina, Croatia, Montenegro, Serbia, Slovenia and the former Yugoslav Republic of Macedonia to discuss the establishment of a Balkan NPM network, organized by the NPM of Serbia;

(f) In April 2013, a meeting in Quito on NPMs and the prevention of torture, organized by APT and the Office of the Ombudsman of Ecuador;

(g) In May 2013, a training course in Manila on NPMs, organized by APT;

(h) In May 2013, a workshop in Nouakchott on NPMs, organized by APT;

(i) In July 2013, a meeting in Santiago on NPMs, organized by the Human Rights Centre at the University of Chile;

(j) In September 2013, a round table in Manila with the Philippines Optional Protocol Working Group;

(k) In September 2013, a meeting in Helsinki with the Parliamentary Ombudsman of Finland;

(l) In October 2013, a meeting in Bucharest on an NPM with the Parliamentary Human Rights Committee of Romania;

(m) In October 2013, a seminar on torture prevention, organized in Asunción by OHCHR, the NPM of Paraguay and APT;

(n) In November 2013, the Second Jakarta Human Rights Dialogue on Prevention of Torture in the Association of Southeast Asian Nations (ASEAN) Region, organized by the ASEAN Intergovernmental Commission on Human Rights;

(o) In November 2013, a conference in Strasbourg, France, entitled "Immigration detention in Europe: establishing common concerns and developing minimum standards";

(p) In December 2013, a seminar in Bangkok on the Optional Protocol, organized by the International Commission of Jurists;

(q) In December 2013, a subregional consultation in Kampala on strengthening the protection mandate of national human rights institutions in East Africa, organized by OHCHR Uganda;

(r) In December 2013, a workshop in Bamako to raise awareness about the prevention of torture and the role of the Optional Protocol in Mali, organized by the Ministry of Justice of Mali;

(s) In December 2013, a round table in Phnom Penh on the establishment of an NPM, organized by OHCHR Cambodia.

28. The Subcommittee would like to take this opportunity to express its gratitude to the organizers of those and all other events to which the Subcommittee has been invited. It regrets that its participation must remain conditional on the financial support of others, as it has no means of its own with which to fund its members' attendance.

F. Special Fund under article 26 of the Optional Protocol

29. The purpose of the Special Fund established under article 26, paragraph 1, of the Optional Protocol is to help finance the implementation of Subcommittee recommendations made following a visit to a State party, and education programmes of NPMs. The Special Fund is administered by OHCHR in conformity with the Financial Regulations and Rules of the United Nations and the relevant policies and procedures. As an interim measure, it was agreed that the OHCHR Grants Committee would decide on the eligibility of projects and would award grants on the basis of the evaluation criteria set out in the guidelines for applications. More permanent arrangements, building on the success of the interim scheme, are currently being developed.

30. The Subcommittee is convinced that the Special Fund is a valuable tool for furthering the prevention of torture and wishes to express its gratitude to contributors for their generosity.[4] In 2013, contributions totalling US$ 10,000 were received from Argentina. The Subcommittee notes that, in 2012, the Fund received contributions totalling US$ 403,363[5] and is anxious to ensure that donations continue at a rate commensurate with the needs which the Fund is intended to address.

31. The second call for applications to the Special Fund (August–October 2012) yielded 30 applications. Following informal consultations with the Subcommittee at its nineteenth session, eight grants were awarded, totalling US$ 277,588. The third call for applications to the Special Fund was issued in September 2013.

32. The Subcommittee firmly believes that the collaborative manner in which the Special Fund is currently administered reflects the aspirations of the drafters of the Optional Protocol. In particular, it believes that the focused and country-specific guidance which it can provide concerning its recommendations is essential in order to maximize the preventive impact of the grants made. The Subcommittee hopes that the Fund will continue to support projects that are essential for the effective prevention of torture and ill-treatment.

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[4] The Special Fund receives voluntary contributions from Governments, intergovernmental and non-governmental organizations and other private and public entities.

[5] In 2012, the Special Fund received the following contributions: US$ 158,227.85 from the United Kingdom; US$ 10,219.56 from the Czech Republic; US$ 215,982.72 from Switzerland; and US$ 18,932.47 from Italy.

III. Engagement with other bodies in the field of torture prevention

A. International cooperation

1. Cooperation with other United Nations bodies

33. As provided for under the Optional Protocol, the Chairperson of the Subcommittee presented the sixth annual report of the Subcommittee (CAT/C/50/2) to the Committee against Torture at the Committee's plenary meeting on 16 May 2013. The Subcommittee and the Committee also took advantage of their simultaneous sessions in Geneva in November 2013 to discuss a range of issues, both substantive and procedural, that are of mutual concern.

34. In conformity with General Assembly resolution 67/161, the Subcommittee Chairperson presented the sixth annual report of the Subcommittee to the General Assembly at its sixty-eighth session, on 22 October 2013. That event also provided an opportunity for the Chairperson of the Subcommittee to meet with the Chairperson of the Committee against Torture and the Special Rapporteur on the question of torture, both of whom also addressed the General Assembly.

35. The Subcommittee has continued its active involvement in the annual Meeting of chairpersons of human rights treaty bodies. The Chairperson of the Subcommittee was elected Vice-Chair of the twenty-fifth Meeting, held from 20 to 24 May 2013 in New York. As indicated in its sixth annual report, the Subcommittee endorsed the guidelines on the independence and impartiality of members of the human rights treaty bodies (the Addis Ababa guidelines) and adapted its rules of procedure to ensure they are in full conformity with the guidelines. It also adopted a statement on the treaty body strengthening process, which is available on the Subcommittee website. It also participated in numerous other OHCHR activities (see sect. II. E above).

36. The Subcommittee continued its cooperation with the Special Rapporteur on the question of torture and joined him, along with the Committee against Torture and the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture, in issuing a statement on the occasion of the International Day in Support of Victims of Torture on 26 June 2013. The Subcommittee was also delighted to meet with both the Special Rapporteur and the Committee against Torture in a public session during its twenty-first session. Also during its twenty-first session, the Subcommittee held its first meeting with the Working Group on Arbitrary Detention.

37. The Subcommittee continued its cooperation with the United Nations High Commissioner for Refugees, the World Health Organization and the United Nations Office on Drugs and Crime.

2. Cooperation with other relevant international organizations

38. The Subcommittee continued its cooperation with the International Committee of the Red Cross, particularly in the context of its field visits.

39. The Subcommittee is pleased to highlight the fact that, during the reporting period, the process of cooperation with the International Organization of la Francophonie (OIF) resulted in a joint OHCHR-Subcommittee-OIF project to provide support for the activities of the Subcommittee for the implementation of the Optional Protocol in States parties which are members of OIF. The main objectives of the project are to assist francophone African States parties in the implementation of their Optional Protocol obligations, in particular the designation and establishment of NPMs.

B. Regional cooperation

40. Through the heads of its regional teams, the Subcommittee continued its cooperation with other partners in the field of torture prevention, including the African Commission on Human and Peoples' Rights, the Inter-American Commission on Human Rights, the Council of Europe, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the European Commission. During its twenty-first session, the Subcommittee met with the European Committee to discuss issues of common interest, including the preventive approach to torture and ill-treatment, reprisals, NPMs, their respective working methods and the Standard Minimum Rules for the Treatment of Prisoners.

C. Civil society

41. The Subcommittee has continued to benefit from the support of civil society actors, in particular APT and the Optional Protocol Contact Network, and academic institutions including the Human Rights Implementation Centre at the University of Bristol. It has also profited enormously from its contact with civil society organizations while conducting its visiting programme. It would like to take this opportunity to thank them all for their work in promoting the Optional Protocol and in supporting the Subcommittee in its activities. The Subcommittee would like to express its particular thanks to the Open Society Justice Initiative, Penal Reform International and the Human Rights Implementation Centre at the University of Bristol for organizing a training workshop at its nineteenth session on pretrial detention. Special thanks must also be given to APT for its invaluable support to the Optional Protocol and to the Subcommittee.

IV. Issues of note arising from the work of the Subcommittee during the period under review

A. New membership

42. At its nineteenth session, the Subcommittee was delighted to welcome six new members and six returning members, following the elections held at the meeting of States parties in October 2012. The Subcommittee wishes to congratulate its new members, who bring with them experience and expertise in diverse fields relevant to the practical work of the Subcommittee.

43. The Subcommittee notes that this marks the commencement of a continual process of orderly turnover of membership, as a result of staggered elections combined with maximum periods of membership. The Subcommittee applauds the balance thus struck between continuity and refreshment of its membership. However, it is also acutely conscious of the need to ensure that its newest members are swiftly and effectively inducted into the Subcommittee's practical work. It regrets that it lacks the capacity to do this as effectively as it would wish, but believes that thought needs to be given to how best to provide appropriate training for the distinctive field-based work of the Subcommittee.

B. Development of working practices

1. National preventive mechanism advisory visits

44. With the introduction in 2012 of NPM advisory visits, the Subcommittee refined its working methods when undertaking visits in order to pay greater attention to the NPM component of its mandate. During 2013, the Subcommittee has been able to consolidate its practice in the light of its growing experience in conducting such visits. It has found that it has been able to cover more ground and enquire into the situation in more countries than was previously the case. The introduction of advisory visits has also given the Subcommittee an opportunity to work more closely with NPMs and focus on the systematic issues which have a bearing on the preventive mandate of NPMs and the similar obligation of States parties. It has been able to draw on this experience when advising and assisting States parties and NPMs in other contexts. The Subcommittee considers this development to have been a great success and such visits will continue to figure in its visiting programme.

45. In its current form, the NPM advisory visit presupposes that an NPM is operational in the country which is to be visited. This is not always the case. Therefore, building on its experience during the year under review, the Subcommittee has decided to vary its methodology in undertaking visits in accordance with its mandate under article 11 (b) of the Optional Protocol in order to enable it to better fulfil its obligations under article 11 (b) (i) to advise and assist States parties, when necessary, in the establishment of NPMs. Such visits, which might be accurately described as Optional Protocol advisory visits, will be short, will not involve the Subcommittee in visiting places of detention under its own visiting mandate, and will focus on meeting with the relevant authorities in the State party in order to assist them in fulfilling their obligations under part IV of the Optional Protocol in dialogue with the Subcommittee.

2. Working groups

46. In 2012, the Subcommittee had established a number of ad hoc working groups. During 2013, the working group on training and induction was discontinued after the nineteenth session, as it had fulfilled its purpose of preparing for the induction of the newly elected members. Likewise, the working group on systemic issues relating to NPMs has concluded its work and its recommendations for improved procedures concerning practical engagement with NPMs will be trialled, with a view to their being refined prior to being made public.

47. The working group on medical issues is continuing its work on a range of issues, including refining its position paper on the work of the Subcommittee relating to people with psychiatric illnesses or disabilities and in psychiatric institutions, taking account of the 2013 report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the Human Rights Council (A/HRC/22/53).

48. The working groups on reprisals, on the Standard Minimum Rules for the Treatment of Prisoners and on practical issues arising from visits continue their work.

49. As the number of Subcommittee visit reports has increased, and the turnover in membership now means that the individuals who have undertaken country visits may no longer be Subcommittee members, it has become necessary to systematize the previously rather ad hoc approach to post-visit dialogue with States parties. The Subcommittee has therefore adopted, for the first time, a common system of nomenclature for each element of its written dialogue, based on the trilogy of "Report, response, reply", thus abandoning the former terminology of "follow-up reports". It has formalized the establishment of small, two- to three-member working groups in respect of each visit report, which meet each

session and coordinate the Subcommittee's response to replies received, as well as taking the lead in any other forms of engagement with the State party concerning the implementation of Subcommittee recommendations. Members of each working group evaluate the information received, assess the situation and propose recommendations to the Subcommittee plenary on how to move forward, such as through letters, invitations to meet, or other specific suggestions. That exercise has thus far proven to be fruitful in advancing focused, constructive dialogue.

3. Subcommittee regional teams

50. It had become apparent that, whilst it had originally been thought that the roles of regional focal point and of the NPM teams would be sufficiently distinct to justify differentiating between them, their work overlapped in practice. Therefore, to avoid duplication, the Subcommittee decided to replace those bodies with four regional teams, each led by a head. The size of the regional teams will vary to take account of the disparity in the numbers of States parties within the regions. The composition of the regional teams will be reviewed and revised on a regular basis to reflect changes in the Optional Protocol participation and Subcommittee membership. As an aid to communication, the membership of the regional teams and the allocation of Country Rapporteurships is available on the Subcommittee website. Further details of the work of the regional teams are contained in the summary report of the working group on systematic issues relating to NPMs (see paras. 69–71 below).

51. The Subcommittee believes that the changes to its working practices have allowed it to become more outwardly engaged, dynamic and responsive to preventive need, capitalizing on its pool of expertise and experience. It means that the Subcommittee is now able to undertake an informed consideration of compliance with Optional Protocol obligations by each and every State party to the Optional Protocol at each and every Subcommittee session, generating further action as appropriate. This depth, spread and frequency of coverage is unique within the human rights treaty body system, and reflects the core Optional Protocol principles of confidentiality, impartiality, non-selectivity, universality and objectivity, as set out in article 2, paragraph 3, of the Optional Protocol.

4. Development of Subcommittee position papers and comments on substantive issues

52. During 2013, the Subcommittee's working groups on the Standard Minimum Rules for the Treatment of Prisoners and on reprisals brought their work to the point at which they would value comments from others on aspects of their thinking, as they seek to further develop and conclude their work. The following sections, prepared by the working groups, highlight a number of specific issues on which comment is sought.

(a) Working group on the Standard Minimum Rules for the Treatment of Prisoners

53. The ongoing process of revisiting the Standard Minimum Rules for the Treatment of Prisoners gives the Subcommittee an opportunity to stress the need for this basic universal document to uphold and reinforce a number of key overarching principles. They are of central importance to the effective prevention of torture and ill-treatment and, in the view of the Subcommittee, are implicit in the Rules themselves: due process, human dignity and non-discrimination in places of detention.

Due process

54. Since imprisonment can only be legitimate when sanctioned by legal process, the Subcommittee believes that it would be appropriate for the Standard Minimum Rules for the Treatment of Prisoners to acknowledge the importance of due process as a basic procedural safeguard which is applicable not only throughout all phases of the criminal

justice process but also the period of imprisonment itself. Due process obligations are not limited to the criminal proceedings and trial. The State has the obligation to ensure that the rights of those convicted and those on remand are properly protected throughout their period of imprisonment.

55. As a result, there must be effective legal procedures available to all prisoners enabling them to challenge any acts or omissions on the part of the detention staff or authorities which are believed to exceed what has been legally sanctioned, and their incidental consequences.

56. In order to achieve such a standard of protective oversight, there needs to be a competent, independent and impartial authority or judicial body empowered to determine whether the detention staff or authorities have acted in breach of their mandate or in excess of their authority and before which both the detainee and custodial staff or authorities appear on an equal footing.

57. While in prison, whether sentenced or in pretrial custody, persons deprived of their liberty must be able to receive advice and assistance from individuals with adequate legal knowledge regarding the exercise of their rights, to enable them to access complaints mechanisms. They must also have effective access to a lawyer who is able to initiate appropriate forms of proceedings before the relevant competent authority or judicial body.

58. Proceedings arising from the situation in penitentiaries can be specialized and may require the expertise of different forms of legal skills than those appropriate for defending against a criminal charge. Translation facilities may also be required. When determining issues brought before them, the competent authority or judicial body must be able to take into account relevant national and international human rights standards.

Human dignity

59. Deprivation of liberty does not negate the right to personal self-determination, which needs to be respected and protected to the maximum extent possible while in prison. In particular, all persons enjoy, inter alia, freedom of conscience, which remains inviolable, and the right to a life plan, which is only temporarily interrupted by the fact that they are imprisoned.[6]

60. All prisoners are the subjects of rights and duties rather than being objects of treatment or correction. Hence, a paradigm shift away from clinical or therapeutic assumptions, where such assumptions exist, is necessary in order to properly reflect a human rights-oriented approach which works to prevent ill-treatment.[7]

61. Special attention must also be given to solitary confinement, which may only be used as an exceptional disciplinary sanction of last resort and for a restricted period. Both its use and the manner in which it is implemented must be subject to stringent controls.

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[6] The concept of the right to a life plan has been developed by the jurisprudence of the Inter-American Court of Human Rights.

[7] The Subcommittee notes that the Standard Minimum Rules for the Treatment of Prisoners currently appears to use the word "treatment" in at least three different ways: (a) in a general, rather ambiguous term of uncertain scope (title and rules 1, 8, 22 (1) and (2), and 94; (b) in a medical sense, relating to detainees who are unwell (rules 22 (1), 23 (1), 44, 82 (4) and 83; and (c) as a description of a corrective/therapeutic approach to detainees (rules 28 (2), 35 (1), 55, 59, 61, 63 (1) and (3), 65, 67 (b), 68, 70 and 75 (2). It is the latter use of the word which is of concern to the Subcommittee.

Non-discrimination

62. Decisions concerning the particular modalities of a detention regime should be based on individualized risk assessments, conduct while in detention and other relevant objective factors. Approaches based on labelling or categorizing prisoners according to general psychological profiles, on the nature of their criminal record or on perceptions of the danger they would pose to society if they were not in prison can deprive them of the enjoyment of their rights on the basis of equality, thus constituting a form of discrimination.

(b) Working group on reprisals

63. The Subcommittee is naturally concerned that its visits frequently lead to reprisals, that is, acts or omissions that permit "any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false".[8] The Subcommittee attaches the highest priority to preventing reprisals and meeting its commitment to do no harm.

64. The Subcommittee is seeking to develop a proactive policy that asserts its uncompromising commitment to preventing reprisals. When finalized, the policy will be a public document and will inform the manner in which the Subcommittee engages with those with whom it works and cooperates.

65. It is therefore suggested that, prior to any visit, the Subcommittee will consider the track record of the relevant State with regard to reprisals, appoint a member of the Subcommittee delegation as the focal point for reprisals, and ask the State to distribute a fact-sheet on reprisals and the Subcommittee's reprisals policy to all relevant interlocutors. Areas of concern would be raised by the Subcommittee with the State party, either by letter or in a meeting with the State party's Permanent Mission in Geneva.

66. If, during a visit, the Subcommittee is made aware of reprisals carried out by the State party, it might implement one or more measures. Such measures might include communicating with the appropriate Government or with officials responsible for the facilities in question and highlighting areas of concern; communicating with the diplomatic missions of other States parties; conducting follow-up visits to monitor the situation, or asking local NPMs or specialized non-governmental organizations to conduct such visits; adapting interview techniques; requesting the intervention of other United Nations bodies; speaking to the local or international media; and, in extreme cases, withdrawing the Subcommittee's delegation from the country.

67. Following each visit, the delegation's focal point for reprisals would be responsible for following up on the Subcommittee's concerns and advising the head of delegation of any measures that needed to be implemented to prevent reprisals. The Subcommittee would then cooperate with all relevant United Nations bodies and other regional mechanisms to ensure that reprisals were prevented. It would do this by keeping States parties to the Optional Protocol informed of developments relating to reprisals; establishing a database of reprisal cases; and cooperating with NPMs to promote common policies to prevent reprisals.

68. The Subcommittee would keep its policy, once formally adopted, under constant review.

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[8] Optional Protocol, art. 15.

(c) Working group on systemic issues relating to national preventive mechanisms

69. The Subcommittee has decided that it would be helpful to draw up guidelines concerning the manner in which the Subcommittee undertakes its work with NPMs. The guidelines are currently internal to the Subcommittee, as it trials and evaluates them. Both the guidelines and their confidential nature will be reviewed by the Subcommittee at its session in June 2014. The guidelines not only reflect the Optional Protocol mandate of the Subcommittee, but also reflect and respond to the views expressed by both States parties and NPMs concerning their aspirations and their expectations of the Subcommittee in that regard.

70. The guidelines provide details concerning the work of the four regional teams established within the Subcommittee (see para. 50 above) and the responsibilities of their members. The main task of the regional teams is to undertake and coordinate the NPM related activities of the Subcommittee within each region. Every Subcommittee member is assigned to a regional team and is appointed country rapporteur for a number of States. The main task of the country rapporteur is to maintain an up-to-date overview of the situation regarding the establishment and work of the NPM. Each regional team is led by a head, whose principal task is to direct and coordinate the activities of the team, under the overarching direction of the Subcommittee Bureau, led by the Vice-Chairperson for NPMs in conjunction with the Subcommittee Chairperson.

71. The guidelines also establish the framework within which the Subcommittee can develop its relations with others regarding NPM activities. The Subcommittee seeks to actively engage with other United Nations bodies and external stakeholders in the fulfilment of its NPM related mandate, and is particularly keen to encourage its regional teams to foster collaborative activities between NPMs and other stakeholders themselves.

V. Substantive issues: corruption and prevention of torture and other ill-treatment

A. Introduction

72. "Corrupt and malfunctioning criminal justice systems are a root cause of torture and ill-treatment of detainees".[9] There is a recognized correlation between the levels of corruption within a State and the prevalence of torture and ill-treatment: corruption breeds ill-treatment, and disregard for human rights contributes to the prevalence of corruption. In this section of the present report, the link between the two phenomena is considered and the need to take steps towards preventing corruption as a means of better protecting detainees from torture and other ill-treatment is highlighted. This also involves, inter alia, a commitment to democratic principles, the rule of law, including transparency and accountability, effective mechanisms for independent oversight, a free press and an independent judiciary.

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[9] Manfred Nowak, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, addressing the Commission on Crime Prevention and Criminal Justice on 24 April 2009. See www.unodc.org/unodc/en/frontpage/un-human-rights-rapporteur-denounces-torture.html.

B. Corruption defined

73. Corruption can be broadly understood as the dishonest misuse or abuse of a position of power to secure undue personal gain or advantage, or to secure undue gain or advantage for a third party. The acts that it includes can be derived from the prohibitions included in various international and national texts, including the United Nations Convention against Corruption (2003), the African Union Convention on Preventing and Combating Corruption (2003), the Inter-American Convention against Corruption (1999) and the Criminal Law Convention on Corruption (1999) of the Council of Europe.[10]

74. The United Nations Convention against Corruption, for instance, sets out a broad range of corruption-related offences that require preventive and corrective measures. Corruption can occur in both the public and private sectors, and includes such acts as bribery, money-laundering, embezzlement, trading in influence, abuse of position, illicit enrichment and obstruction of justice.

75. The United Nations Office on Drugs and Crime distinguishes between "grand corruption" and "petty corruption". Grand corruption concerns senior (State) officials and may involve large sums of money, assets or other benefits. Tackling grand corruption may be dangerous and it may thus be difficult to eradicate without the involvement of international organizations. Petty corruption, which the Subcommittee has frequently encountered during its visits to places of detention, refers to people's experiences in their dealings with corrupt public officials when using public services, and generally involves modest sums of money or other favours. Corruption is a complex phenomenon that is encountered worldwide; it is present in both developed and developing countries and is often subtle and difficult to identify. Whilst the relative economic development of a State does not affect the risk of corruption existing in the State, it may affect the manner in which corrupt groups and individuals operate and may make it more difficult to detect corruption where it is present. Such corruption can only be eradicated if there is a clear and strong political will to do so, supported by educational programmes for all stakeholders and for the general public concerning corruption and human rights.

C. Human rights, democracy and corruption: their broader relationship

76. Linking anti-corruption and human rights frameworks in practice requires an understanding of how the cycle of corruption facilitates, perpetuates and institutionalizes human rights violations. It is widely recognized that corruption "undermines accountability and transparency in the management of public affairs as well as socio-economic development."[11] "Corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society".[12] Conversely, but related to this, in its preamble, the French Declaration of Human and Citizen's Rights of 1789 states that ignorance, neglect and contempt for human rights are the only causes of public misfortune and the corruption of

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[10] See also the Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (1997), the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997) of the Organization for Economic Cooperation and Development and the Civil Law Convention on Corruption (1999) of the Council of Europe.

[11] African Union Convention on Preventing and Combating Corruption, preamble.

[12] Criminal Law Convention on Corruption, Council of Europe, preamble.

governments. There is thus a strong and recognized link between human rights abuses generally, and corruption; corruption leads to human rights abuses, while disregard for human rights breeds corruption. The problem is self-perpetuating and in order to prevent human rights abuses, including torture and ill-treatment, human rights and democratic principles must be taken seriously by the State and measures must be taken towards eradicating corruption.

77. Critically, and without exception, "the prevention and eradication of corruption is a responsibility of all States".[13] The United Nations Convention against Corruption and other related conventions provide a solid basis for States to prevent and eradicate corruption, stating that it is incumbent on States to ensure that they take steps to criminalize and prosecute cases of corruption. States must also act preventively, ensuring that there is transparency and accountability. In order to eradicate corruption, States should also cooperate with international partners and other States.

78. Examining the causes of corruption and the means to address them, the United Nations human rights treaty bodies and special procedures have often concluded that States cannot comply with their human rights obligations in situations where corruption is widespread. However, the extent to which acts of corruption directly violate human rights, or lead to violations, is rarely explained or defined in precise terms.

79. Within the broader framework of human rights protections and corruption, the scope of the present report is limited to the connection between petty corruption and torture and other ill-treatment, based on the experiences of the Subcommittee when undertaking its country visits.

D. Correlation between corruption and torture and ill-treatment

80. Corruption violates the rights of all those affected by it, but it has a disproportionate impact on people belonging to groups exposed to particular risks, such as minorities, indigenous peoples, migrant workers, people with disabilities, those with HIV/AIDS, refugees, prisoners, women, children and those living in poverty. In the exercise of its mandate to prevent torture and other ill-treatment, the Subcommittee has observed that, while all detainees are in a position of vulnerability, those in police cells awaiting questioning and those in pretrial custody or immigration detention are particularly vulnerable. Similarly, migrant workers who lack a residence permit may also fall victim to corrupt officials who, knowing the workers are unable to lodge complaints, seek to extort money from them using the threat of violence and deportation. Their vulnerability is heightened further if they are unable to retain the services of a counsel or benefit from legal aid. Access to a lawyer has been shown to be a valuable protection against corrupt officials as well as a preventive safeguard against torture and other ill-treatment.

81. Those who commit corrupt acts will attempt to protect themselves from detection and to maintain their positions of power. In doing so, they are likely to further oppress those in positions of vulnerability, who are more likely to be more exploited and less able to defend themselves. In this way, corruption reinforces their exclusion and the discrimination to which they are exposed.

82. Accordingly, there is a strong correlation between the levels of corruption within a State and the levels of torture and ill-treatment found there. One reason is that in States with high levels of corruption there may be less likelihood of torture and ill-treatment being either discovered or prosecuted. The struggle to promote human rights and the campaign

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[13] United Nations Convention against Corruption, preamble.

against corruption share a great deal of common ground. A corrupt government that rejects both transparency and accountability is unlikely to respect human rights. Indeed, the rejection of transparency and accountability make the protection of human rights difficult, if not impossible. Therefore, eradicating corruption and preventing torture and ill-treatment are not disparate processes, but are interdependent. Corruption within a State seriously impedes the eradication of torture and ill-treatment. Hence, to prevent torture and ill-treatment it is also critical to prevent and eradicate corruption. There must be vigilance, and where corruption is present it must be rooted out and punished appropriately, in accordance with the law.

E. Under what circumstances does corruption thrive?

83. The interrelationship of torture and ill-treatment and corruption is influenced by the extent of economic development and the level of functioning democracy within a State. Although it is sometimes thought that corruption is more prevalent in developing than in developed countries, that is not always the case. Indeed, some developed countries and corporations from the developed world bear responsibility for corruption in developing countries. While corruption in developed countries is often more sophisticated, subtle and less visible than in developing countries, and hence may be more difficult to detect, that does not mean that it is not present. In general, however, democratic States with strong economies tend to have a lower incidence of human rights violations.

84. In the context of torture and other ill-treatment, this may be for a number of reasons:

(a) States vary in their financial ability to achieve a common and acceptable standard of detention conditions. Where the general conditions of detention fall below minimum acceptable standards, it is more likely that corrupt prison officers may extort money from inmates with financial means in order for those detainees to have access to certain privileges, services or benefits;

(b) State agents in countries with unstable governments, including those which have experienced war and political instability, may be more ready to use violence to maintain control of a politicized population. In a culture where violence has become normalized, corruption, such as extorting protection money, is more likely to occur;

(c) In countries where State agents may not receive proper or adequate pay for their work, there will be a greater temptation to resort to corruption, abuse of power and extortion of money from detainees in vulnerable situations as a means of supplementing incomes. Likewise, in understaffed institutions, a system based on the use of trusted inmates is more likely to be in place, and the trusted inmates themselves may take advantage of their privileged position to extort money or favours from other, more vulnerable, inmates.

85. Similarly, in States which do not subscribe to democratic principles and the rule of law, corruption and human rights abuses are more common. The open engagement of States in international political and economic life, in accordance with international law and within the framework of international organizations, is likely to have a beneficial effect on their human rights compliance. It also enhances the possibility of external pressure being applied, such as aid being made conditional upon compliance with international human rights norms, transparency and good governance.

86. Another important element is the education and training of State agents. Poor selection criteria and inadequate training, the hardening effect of previous violence and the inattention or indifference of those in command encourage State agents to behave in a corrupt and repressive manner, often with impunity. When corrupt or malicious State agents are not subject to external and independent scrutiny, levels of torture and ill-

treatment are significantly higher. Transparency and accountability within a State system are prerequisites for ensuring that such actions are not concealed and do not go unpunished. Unsurprisingly, those principles are generally absent in States where corruption is rife. Enhancing transparency and accountability within the State system is an important means of combating both torture and ill-treatment, and corruption. The importance of a State subscribing and adhering to democratic principles and the rule of law, including transparency and accountability, cannot be overstated.

F. Conflict and political repression: the importance of democratic principles and the rule of law

87. In countries where there is or has been conflict, State agents use more violence, including torture and ill-treatment, than in States that are not in conflict. In non-democratic States, there is a heightened risk of suppression of political dissent by means of torture, ill-treatment, unlawful killing, disappearance and imprisonment. Democracy tends to inhibit repressive conduct, particularly where State agents have been appropriately selected and trained in human rights awareness, and where independent oversight mechanisms are in place. In a democracy where, inter alia, transparency, a free press, independent oversight and complaints mechanisms, and an independent and impartial judiciary and judicial process are all valued and protected, there is more information available relating to the actions of State agents and hence there is greater accountability, including recourse to investigation and/or prosecution when appropriate.

88. Illegal, unauthorized and unregulated activities of security officials pursuing private interests may substantially contribute to the overall amount of violence, or even be its principal cause. A State must never turn a blind eye to violence perpetrated by its officials, but all too often, an absence of democracy means that this is precisely what happens. In a democracy, the accountability of government through the electoral process means that it is in the direct interest of those in power to ensure that State agents are held accountable, and to guard against corruption and the use of torture and ill-treatment.

G. Petty corruption

89. Petty corruption is that which is encountered by people in their dealings with corrupt public officials, including the police, prison officers and members of security services who use their authority for personal advantage, thus adding to the suffering of those they should be seeking to serve. This may be driven by general economic circumstances and/or by poorly paid officials seeking to supplement their income.

90. The Subcommittee is aware that torture, ill-treatment, or the threat of torture or ill-treatment, may be used to extort bribes by poorly paid State officials, in abuse of their authority. The risk of such financially motivated abuses can be lessened by ensuring that State agents receive appropriate remuneration, on a regular basis.

91. Such risks can also be mitigated by the safeguards which should be provided by democratic societies governed by the rule of law to protect detainees from the risk of ill-treatment. In particular, individuals detained for questioning or those awaiting trial should be able to have access to legal advice, a medical examination and health care, be able to challenge the legitimacy of their detention before judicial authorities and have access to effective complaints mechanisms, all of which will lessen the risk of extortion. Independent auditing and monitoring systems will also help ensure that information regarding such wrongful practices is transmitted throughout the chain of authority.

92. Nevertheless, such measures alone are unlikely to prevent abuses from occurring. Accordingly, there is a need for proactive policies which improve both education and accountability. Appropriate training and education of police and detaining officials is also essential to combat and protect against corruption and the use of violence. States should refer to the Subcommittee's guidance in that regard (CAT/OP/15/R.7/Rev.1).

93. Adequate laws, an independent judiciary, professionally trained staff, an active civil society and a free press and media are also important elements of a well configured system which reduces the likelihood of petty corruption taking place and challenges impunity.

H. Subcommittee's experience in the field regarding petty corruption and torture and ill-treatment

94. Given the focus of its work during country visits, the type of corruption the Subcommittee is most likely to encounter is petty corruption. In the light of its experience, the Subcommittee believes that petty corruption perpetrated by underpaid public officials is widespread in many places of detention and particularly in prisons, for both pretrial and sentenced prisoners.

95. The Subcommittee frequently observes situations in which detainees are not provided with the most basic and necessary amenities and facilities. The absence of basic provisions obviously and inevitably brings with it the risk or likelihood of such amenities and facilities being made available only to those who can pay, or pay the most, for them.

96. In some situations, it is common for the authorities either to abdicate the day-to-day running of prisons to some trusted inmates and so-called heads of cells, or to condone the acts of powerful inmates. The Subcommittee has encountered significant evidence of corruption and abuse of power by heads of cells and prisoners, as well as by custodial staff, which has also involved extortion and bribery combined with physical intimidation and ill-treatment of more vulnerable detainees.

97. The Subcommittee has frequently heard from detainees that they must make payments to heads of cells in order to receive basic necessities and enjoy their basic rights, and that the monies paid are often shared with the prison staff. Even access to medical care, family visits, telephone calls and to submit complaints to the prison administration can be made contingent upon payments to both heads of cells or other detainees and staff. The Subcommittee has also encountered situations in which the few who can pay are able to have a place in less overcrowded or better equipped cells, have greater access to facilities and be subject to a considerably less stringent regime than others. This can also include the liberty to move freely within the prison compound. These are all examples of petty corruption linked to torture and other ill-treatment which the Subcommittee believes must be addressed in order to ensure that those in detention are not subjected to forms of treatment which violate international standards.

I. Concluding remarks

98. Torture, ill-treatment, human rights abuses more broadly and corruption are inextricably linked; where there are higher levels of corruption, more instances of torture and ill-treatment are usually found. In States where there is corruption, there is less likelihood of ill-treatment being discovered and/or appropriate action being taken against those responsible. Therefore, the existence of corruption within a State seriously impedes moves to eradicate torture and other ill-treatment. In order to combat torture and ill-treatment, States must take all appropriate steps to eradicate corruption, in accordance with

international law. Preventing torture and ill-treatment and preventing corruption are the responsibility of all States, without exception.

99. While present in all States, torture and ill-treatment and petty corruption form part of a broader dynamic which includes democracy, the rule of law and the economic strength of a State. In economically vulnerable States, there may be greater temptation to resort to corruption, including extortion involving the threat or use of violence, as a means of supplementing income. To mitigate this risk, it is essential that State agents receive adequate pay which reflects the work that they do, including their responsibility for vulnerable groups. Likewise, it is essential that appropriate staff are employed, that they receive ongoing training highlighting the importance of human rights and the absolute prohibition of torture and ill-treatment, and that it is made absolutely clear that corruption will not be tolerated and that vigorous action will be taken against anyone found responsible for corruption and corrupt practices.

100. Transparency and accountability are essential to prevent torture, ill-treatment and corruption. Democracy inhibits repression, and where democracy and the rule of law are absent, the incidence of torture, ill-treatment and corruption is generally greater since such acts go undetected or unpunished. In a democracy where, inter alia, transparency, a free press, freedom of information, education of the public to curb corruption and human rights abuses, independent oversight and complaints mechanisms, and an independent and impartial judiciary and judicial process are all valued and protected, there is more information available relating to the actions of State agents and hence greater accountability. Accordingly, the importance of adherence to democratic principles in effectively preventing and eradicating torture, ill-treatment and corruption cannot be overstated.

VI. Looking forward

101. Once again, the Subcommittee has responded to the challenges it faces by refining its working practices in the interest of enhancing impact while improving efficiency. Over the past four years, it has transformed its work in relation to NPMs. It has progressively systematized its internal working processes to ensure that the situation in all States parties is under thorough and continual review. It has ensured that its programme of visits is tailored to form an integrated element of its universal approach to its mandate. It has sought to develop collaboration with other United Nations agencies in order to enhance its dialogue with States parties, and continues to offer advice and assistance to States parties, and upon request, to signatories and others interested in establishing mechanisms which are compatible with the Optional Protocol criteria as a potential precursor to participation in the Optional Protocol system. There are, however, limits to what can be achieved within its existing support structures and the Subcommittee recognizes that it is now working at the outer edges of what is conceivable within them. It is against this background that the Subcommittee has made its plans for 2014.

A. Plan of work for 2014

102. The Subcommittee regrets that it was unable to recapture in 2013 the ground lost in 2012 when it had to postpone a visit for the want of sufficient secretariat support. As a result, the visit to Togo planned for 2013 had to be postponed until 2014. Nevertheless, as the Subcommittee believes it is vital for it to expand the range of its activities given the increasing number of States parties, it decided at its twentieth session that, in 2014, it will undertake eight official visits: full visits to Azerbaijan, Nicaragua and Togo (postponed from 2013); NPM advisory visits to Ecuador, Malta and the Netherlands; and an Optional

Protocol advisory visit to Nigeria, with a follow-up visit in accordance with article 13, paragraph 4, of the Optional Protocol.

103. In addition to its visiting programme and NPM related activities, the Subcommittee is now also using its website and the present report to solicit comments and suggestions relating to a number of issues on which it is developing its thinking. While appreciating that confidentiality is pivotal to its operation, the Subcommittee will continue to explore potential avenues to engage with other bodies and organizations whose work is cognate to its own.

B. The challenge of resources

104. In recent years, the Subcommittee has consciously avoided commenting at length on the inadequacy of the resources made available for its work. It remains aware that it must work efficiently within the budgetary allocations made available to it by OHCHR within the overall budgetary envelope. The Subcommittee is very grateful to those States which, recognizing the inadequacy of that provision, have striven in various ways to address its needs.

105. It is, however, apparent to the Subcommittee that, in order to fulfil its current plans for 2014 and beyond, it is essential that a stable, core secretariat be in place to service its cycle of work; that has been sadly lacking in recent times. The 2014 programme of work of the Subcommittee requires at the minimum that the core secretariat of the Subcommittee be returned to its level of two years ago (2 General Service and 3 Professional staff members). The Subcommittee secretariat needs to be further strengthened in line with the High Commissioner's recommendation in her report on the strengthening of the human rights treaty bodies (A/66/860), in which she acknowledged the need for additional resources. In conjunction with the supportive arrangements entered into by others, this would suffice to ensure that the Subcommittee is able to carry out its projected programme of work in the short term.

106. It must remain a matter of speculative conjecture how, in the longer term, the Subcommittee can possibly aspire to continue to meet the ever increasing desire of States parties and NPMs to work with the Subcommittee in order to ensure that the spectre of torture is diminished without there being a fundamental reappraisal of the nature of the provision which is made for its work.

Annex VIII

Joint statement on the occasion of the United Nations International Day in Support of Victims of Torture

The Committee against Torture, the Subcommittee on Prevention of Torture, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture marked the International Day in Support of Victims of Torture with the following joint statement:

Victims of torture continue to be ignored, silenced, abandoned or revictimized. Impunity and insufficient protection measures for victims stand in the way of a torture-free world. On this International Day in Support of Victims of Torture, the Committee against Torture, the Subcommittee on Prevention of Torture, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture reflect on how the world would look if accountability and the rule of law were strengthened to stamp out and prevent torture.

"Imagine a world where torture is not condoned and those individuals who perpetrate torture are promptly brought to justice through the full force of the rule of law. Indeed, this should not require a stretch of the imagination. States are, and have long been, obligated by international law to investigate, prosecute and punish all acts of torture and ill-treatment," said the Special Rapporteur on the question of torture, Juan E. Méndez.

Claudio Grossman, Chair of the Committee against Torture, noted that 30 years had passed since the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had entered into force, and unequivocally held that torture is prohibited under all circumstances, without any exception.

However, torture continues to take place all over the world. In some countries it is a systematic practice; in others there are isolated incidents. The main perpetrators may be officials or outlawed groups, gangs or individuals that torture with the explicit or tacit consent of the State.

"A world without torture will be achievable when prosecutors and judges refuse to rely on coerced confessions and insist on investigating acts of torture and prosecuting those responsible for them," Grossman said, adding that, "in 2012, the Committee issued a landmark general comment, elaborating on the right to ensure that victims of an act of torture obtain redress and have an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible".

To mark the thirtieth anniversary of the Convention, a group of States has initiated a 10-year global initiative for the universal ratification and implementation of the Convention. "This is an ambitious undertaking and this day, 26 June, commemorates the plight of victims and reminds us of the long road ahead", Grossman added.

The relentless and indiscriminate targeting of individuals in the name of counter-terrorism and national security, as well as in the contexts of health care and States' irregular migration policies, remind us that we are far from realizing the goal of a world free of torture, the experts said.

"A world where there are no victims of torture would be a world where we can trust the police and intelligence agencies to do their jobs and prevent crime without resorting to violence", said Malcolm Evans, Chair of the Subcommittee on Prevention of Torture.

Proper and effective documentation of torture requires a multilayered approach by all responsible authorities — law enforcement, doctors and forensic specialists, lawyers and the judiciary — he said.

Survivors of torture, who are courageous enough to speak out about their physical traumatization and psychological ordeal, need empowerment and institutional support so their stories can be heard, without fear of reprisals.

"We are working towards a world where victims are assisted from a holistic perspective and their inherent dignity is restored as they obtain justice and access to long-term rehabilitation and redress", said Morad El Shazly, Chair of the United Nations Voluntary Fund for Victims of Torture.

The experts expressed the hope that torture will be completely eradicated one day, stressing that in order to achieve this, "we must work together to end impunity for perpetrators and to provide effective redress for the victims of torture and ill-treatment who must not be left to suffer alone for one more day".

Annex IX

Statement of the Committee against Torture adopted on 4 November 2013, at its fifty-first session (28 October–22 November 2013)

1. The Committee against Torture is a treaty body of the United Nations established under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2. Pursuant to article 17 of the Convention, "the Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity".

3. The Committee against Torture unanimously decided that financial misconduct is incompatible with serving on the Committee.

Annex X

Statement of the Committee against Torture, adopted at its fifty-first session (28 October–22 November 2013), on reprisals

1. The Committee against Torture has appointed two of its members as rapporteurs on reprisals: George Tugushi, for cases regarding those who provide information to the Committee under article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in respect of periodic reports and follow-up on measures to give effect to the undertakings in the Convention; and Alessio Bruni, for cases regarding those who engage in the individual complaint procedure under article 22 of the Convention and inquiries under article 20, or who otherwise participate in these procedures. The Committee has commended the rapporteurs for the activities they have undertaken since November 2012, when the positions were established.

2. The Committee welcomes the statement of the Chairs of the human rights treaty bodies, who acknowledged at their twenty-fifth meeting, in May 2013, the "valuable contributions" of civil society organizations to the work of the treaty bodies "through submissions, inputs, hearings or briefings" (A/68/334, para. 34). Together with the Chairs, the Committee strongly reaffirms the vital role of individuals, groups and institutions that provide information to the Committee, and its appreciation to all those who are committed to the effective functioning of the Committee and the implementation of the entire Convention.

3. In setting out the obligation of each State party to ensure that individuals who allege torture have "the right to complain", article 13 of the Convention stipulates that "steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given".

4. The Committee reminds all State parties that, in accordance with their obligations under the Convention, they shall refrain from reprisals against individuals, groups and institutions that seek to cooperate with or otherwise assist the Committee, whether by providing it with information, or by communicating about the findings or actions of the Committee, advancing compliance with reporting obligations or assisting the Committee in the pursuit of any of its functions.

5. In cases where the Committee against Torture finds that reprisals have been initiated against non-governmental organizations or individuals for their cooperation and/or participation in the Committee's work, as outlined above, the Committee plans to assess the situation based on the provisions of article 13 and the recommendations of the rapporteurs on reprisals. When claims are received, the rapporteurs will communicate with the complainants, authorities in the relevant State party, the Office of the United Nations High Commissioner for Human Rights and the Secretary-General to request the immediate cessation of such acts. Together with these communications, the Committee may ask its rapporteurs or other members to visit the States parties and places where the reprisals occurred, and also request local institutions, non-governmental organizations, and country-based representatives of the Office of the United Nations High Commissioner for Human Rights to conduct follow-up interviews and/or visits to places where the individuals or groups concerned are based. The Committee may also request further intervention of other relevant United Nations bodies and officials, including the High Commissioner for Human Rights.

6. The Committee will also report publicly, including in statements posted on its website and in its annual report, on the cases of reprisals it encounters and on measures taken to end them. It will also notify the Secretary-General for further action.

7. Those wishing to communicate with the Committee on the matter of reprisals can contact the rapporteurs at cat@ohchr.org.

Annex XI

Status of reports, as at 23 May 2014

A. Initial reports

The status of initial reports as at 23 May 2014 is as follows:

Initial reports

State party (since)	*Overdue since*	*Due received on*
Antigua and Barbuda (1993)	17 August 1994	-
Bangladesh (1998)	4 November 1999	-
Botswana (2000)	7 October 2001	-
Cape Verde (1992)	3 July 1993	-
Congo (2003)	30 August 2004	Received 28 February 2014
Côte d'Ivoire (1995)	16 January 1997	-
Dominican Republic (2012)	23 February 2013	-
Equatorial Guinea (2002)	6 November 2003	-
Guinea-Bissau (2013)	-	Due 24 October 2014
Iraq (2011)	6 August 2012	-
Lao People's Democratic Republic (2012)	26 October 2013	-
Lebanon (2000)	3 November 2001	-
Lesotho (2001)	11 December 2002	-
Liberia (2004)	22 October 2005	-
Malawi (1996)	10 July 1997	-
Maldives (2004)	20 May 2005	-
Mali (1999)	27 March 2000	-
Nauru (2012)	26 October 2013	
Niger (1998)	3 November 1999	-
Nigeria (2001)	28 June 2002	-
Pakistan (2010)	23 July 2011	-

State party (since)	*Overdue since*	*Due received on*
Saint Vincent and the Grenadines (2001)	30 August 2002	-
San Marino (2006)	27 December 2007	-
Seychelles (1992)	3 June 1993	-
Somalia (1990)	22 February 1991	-
State of Palestine (2014)	-	Due 2 May 2015
Swaziland (2004)	25 April 2005	-
Timor-Leste (2003)	16 May 2004	-
United Arab Emirates (2012)	19 August 2013	-
Vanuatu (2011)	11 August 2012	-

B. Periodic reports

The status of periodic reports as at 23 May 2014 is as follows:

Periodic reports

State party (since)	*Last examination*	*Overdue since*	*Due received on*
Afghanistan (1987)	Initial November 1992	Second 25 June 1996	-
Albania (1994)	Second May 2012	-	Third Due 1 June 2016
Algeria (1989)	Third May 2008	Fourth 20 June 2012	-
Andorra (2006)	Initial November 2013	-	Second Due 22 November 2017
Argentina* (1986)	Fourth November 2004	Fifth and sixth 25 June 2008	-
Armenia* (1993)	Third May 2012	-	Fourth Due 1 June 2016
Australia* (1989)	Third May 2008	-	Fourth and fifth Received 31 July 2013
Austria* (1987)	Fourth and fifth May 2010	Sixth 14 May 2014	-
Azerbaijan* (1996)	Third November 2009	Fourth 20 November 2013	-

State party (since)	*Last examination*	*Overdue since*	*Due received on*
Bahrain (1998)	Initial May 2005	Second 4 April 2007	-
Belarus* (1987)	Fourth November 2011	-	Fifth Due 25 November 2015
Belgium* (1999)	Third November 2013	-	Fourth Due 22 November 2017
Belize* (1986)	Initial November 1993	Initial and second 25 June 1996**	-
Benin* (1992)	Second November 2007	Third 30 December 2011	-
Bolivia (Plurinational State of)* (1999)	Second May 2013	-	Third Due 31 May 2017
Bosnia and Herzegovina* (1993)	Second to fifth November 2010	-	Sixth Due 19 November 2014
Brazil* (1989)	Initial May 2001	Second 27 October 2002	-
Bulgaria* (1986)	Fourth to fifth November 2011	-	Sixth Due 25 November 2015
Burkina Faso (1999)	Initial November 2013	-	Second Due 22 November 2017
Burundi (1993)	Initial November 2006	-	Second Received 18 April 2012
Cambodia* (1992)	Second November 2010	-	Third Due 19 November 2014
Cameroon* (1986)	Fourth May 2010	Fifth 14 May 2014	-
Canada* (1987)	Sixth May 2012	-	Seventh Due 1 June 2016
Chad* (1995)	Initial May 2009	Second 15 May 2012	-
Chile* (1988)	Fifth May 2009	Sixth 15 May 2013	-

State party (since)	*Last examination*	*Overdue since*	*Due received on*
China (incl. Hong Kong and Macao) (1988)	Fourth November 2008	-	Fifth Received 20 June 2013
Colombia* (1987)	Fourth November 2009	-	Fifth Received 30 December 2013
Costa Rica* (1993)	Second May 2008	Third 30 June 2012	-
Croatia* (1992)	Third May 2004	-	Fourth and fifth Received 19 March 2013
Cuba (1995)	Second May 2012	-	Third Due 1 June 2016
Cyprus* (1991)	Fourth May 2014	-	Fifth Due 23 May 2018
Czech Republic* (1993)	Fourth and fifth May 2012	-	Sixth Due 1 June 2016
Democratic Republic of the Congo (1996)	Initial November 2005	Second to fourth 16 April 2009	-
Denmark* (1987)	Fifth May 2007	Sixth and seventh 30 June 2011	-
Djibouti (2002)	Initial November 2011	-	Second Due 25 November 2015
Ecuador* (1988)	Fourth to sixth November 2010	-	Seventh Due 19 November 2014
Egypt (1986)	Fourth November 2002	Fifth 25 June 2004	-
El Salvador* (1996)	Second November 2009	Third 20 November 2013	-
Estonia* (1991)	Fifth May 2013	-	Sixth Due 31 May 2017
Ethiopia (1994)	Initial November 2010	-	Second Due 19 November 2014
Finland* (1989)	Fifth and sixth May 2011	-	Seventh Due 3 June 2015
France (1986)	Fourth to sixth May 2010	Seventh 14 May 2014	-

State party (since)	*Last examination*	*Overdue since*	*Due/received on*
Gabon* (2000)	Initial November 2012	-	Second Due 23 November 2016
Georgia* (1994)	Third May 2006	Fourth and fifth 24 November 2011	-
Germany* (1990)	Fifth November 2011	-	Sixth Due 25 November 2015
Ghana (2000)	Initial May 2011	-	Second Due 3 June 2015
Greece* (1988)	Fifth and sixth May 2012	-	Seventh Due 1 June 2016
Guatemala* (1990)	Fifth and sixth May 2013	-	Seventh Due 31 May 2017
Guinea (1989)	Initial May 2014	-	Second Due 23 May 2018
Guyana* (1988)	Initial November 2006	Second 31 December 2008	-
Holy See (2002)	Initial May 2014	-	Second Due 23 May 2018
Honduras* (1996)	Initial May 2009	Second 15 May 2013	-
Hungary* (1987)	Fourth November 2006	Fifth and sixth 31 December 2010	-
Iceland* (1996)	Third May 2008	Fourth 30 June 2012	-
Indonesia (1998)	Second May 2008	Third 30 June 2012	-
Ireland* (2002)	Initial May 2011	-	Second Due 3 June 2015
Israel* (1991)	Fourth May 2009	Fifth 15 May 2013	-
Italy* (1989)	Fourth and fifth May 2007	Sixth 30 June 2011	-
Japan* (1999)	Second May 2013	-	Third Due 31 May 2017
Jordan* (1991)	Second May 2010	Third 14 May 2014	-

State party (since)	*Last examination*	*Overdue since*	*Due received on*
Kazakhstan (1998)	Second November 2008	-	Third Received 3 July 2013
Kenya* (1997)	Second May 2013	-	Third Due 31 May 2017
Kuwait* (1996)	Second May 2011	-	Third Due 3 June 2015
Kyrgyzstan* (1997)	Second November 2013	-	Third Due 23 November 2017
Latvia* (1992)	Third to fifth November 2013	-	Sixth Due 22 November 2017
Libya* (1989)	Third May 1999	Fourth 14 June 2002	-
Liechtenstein* (1990)	Third May 2010	Fourth 14 May 2014	-
Lithuania* (1996)	Third May 2014	-	Fourth Due 23 May 2018
Luxembourg* (1987)	Fifth May 2007	-	Sixth and seventh Received 14 January 2014
Madagascar (2005)	Initial November 2011	-	Second Due 25 November 2015
Malta* (1990)	Second November 1999	Third 12 December 2000	-
Mauritania (2004)	Initial May 2013	-	Second Due 31 May 2017
Mauritius* (1992)	Third May 2011	-	Fourth Due 3 June 2015
Mexico* (1986)	Fifth and sixth November 2012	-	Seventh Due 23 November 2016
Monaco* (1991)	Fourth and fifth May 2011	-	Sixth Due 3 June 2015
Mongolia* (2002)	Initial November 2010	-	Second Due 19 November 2014
Montenegro* (2006)	Second May 2014	-	Third Due 23 May 2018

State party (since)	*Last examination*	*Overdue since*	*Due received on*
Morocco* (1993)	Fourth November 2011	-	Fifth Due 25 November 2015
Mozambique (1999)	Initial November 2013	-	Second Due 22 November 2017
Namibia (1994)	Initial May 1997	Second 27 December 1999	-
Nepal (1991)	Second November 2005	Third to fifth 12 June 2008	-
Netherlands* (1988)	Fifth and sixth May 2013	-	Seventh Due 31 May 2017
New Zealand* (1989)	Fifth May 2009	-	Sixth Received 20 December 2013
Nicaragua (2005)	Initial May 2009	Second 15 May 2013	-
Norway* (1986)	Sixth and seventh November 2012	-	Eighth Due 23 November 2016
Panama (1987)	Third May 1998	Fourth 27 September 2000	-
Paraguay* (1990)	Fourth to sixth November 2011	-	Seventh Due 25 November 2015
Peru* (1988)	Fifth and sixth November 2012	-	Seventh Due 23 November 2016
Philippines* (1986)	Second May 2009	Third 15 May 2013	-
Poland* (1989)	Fifth and sixth November 2013	-	Seventh Due 22 November 2017
Portugal* (1989)	Fifth and sixth November 2013	-	Seventh Due 22 November 2017
Qatar* (2000)	Second November 2012	-	Third Due 23 November 2016

State party (since)	*Last examination*	*Overdue since*	*Due received on*
Republic of Korea* (1995)	Second May 2006	Third to fifth 7 February 2012	-
Republic of Moldova* (1995)	Second November 2009	Third 20 November 2013	-
Romania* (1990)	Initial May 1992	-	Second Received 24 January 2014
Russian Federation* (1987)	Fifth November 2012	-	Sixth Due 23 November 2016
Rwanda (2008)	Initial May 2012	-	Second Due 1 June 2016
Saudi Arabia (1997)	Initial May 2002	Second 21 October 2002	-
Senegal* (1986)	Third November 2012	-	Fourth Due 23 November 2016
Serbia* (2001)	Initial November 2008	-	Second Received 10 October 2013
Sierra Leone	Initial May 2014	-	Second Due 23 May 2018
Slovakia* (1993)	Second November 2009	-	Third Received 18 November 2013
Slovenia* (1993)	Third May 2011	-	Fourth Due 3 June 2015
South Africa (1998)	Initial November 2006	Second 31 December 2009	-
Spain* (1987)	Fifth November 2009	-	Sixth Received 23 December 2013
Sri Lanka (1994)	Third and fourth November 2011	-	Fifth Due 25 November 2015
Sweden* (1986)	Fifth May 2008	-	Sixth and seventh Received 11 March 2013
Switzerland* (1986)	Fifth and sixth May 2010	Seventh 14 May 2014	-

State party (since)	*Last examination*	*Overdue since*	*Due received on*
Syrian Arab Republic (2004)	Initial May 2010	Second 14 May 2014	-
Tajikistan (1995)	Second November 2012	-	Third Due 23 November 2016
Thailand (2007)	Initial May 2014	-	Second Due 23 May 2018
The former Yugoslav Republic of Macedonia* (1994)	Second May 2008	-	Third Received 6 September 2013
Togo* (1987)	Second November 2012	-	Third Due 23 November 2016
Tunisia (1988)***	Second November 1998	-	Third Received 16 November 2009
Turkey* (1988)	Third November 2010	-	Fourth Due 19 November 2014
Turkmenistan (1999)	Initial May 2011	-	Second Due 3 June 2015
Uganda* (1986)	Initial May 2005	Second 25 June 2008	-
Ukraine* (1987)	Fifth May 2007	-	Sixth Received 4 March 2013
United Kingdom of Great Britain and Northern Ireland (1988)	Fifth May 2013	-	Sixth Due 31 May 2017
United States of America* (1994)	Second May 2006	-	Third to fifth Received 12 August 2013
Uruguay* (1986)	Third May 2014	-	Fourth Due 23 May 2018
Uzbekistan (1995)	Fourth November 2013	-	Fifth Due 23 November 2017
Venezuela (Bolivarian Republic of) (1991)	Second and third May 2002	-	Third and fourth Received 11 September 2012

State party (since)	*Last examination*	*Overdue since*	*Due received on*
4Yemen (1991)	Second May 2010	Third 14 May 2014	-
Zambia* (1998)	Second May 2008	Third 30 June 2012	-

* State parties that have accepted the simplified reporting procedure.

** See *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 44* (A/49/44), para. 46.

*** The State party will submit an additional updated report.

Annex XII

Country Rapporteurs for the reports of States parties considered by the Committee at its fifty-first and fifty-second sessions (in alphabetical order)

A. Fifty-first session

Report	*Rapporteur 1*	*Rapporteur 2*
Andorra (CAT/C/AND/1)	Mr. Bruni	Mr. Wang
Belgium (CAT/C/BEL/3)	Ms. Belmir	Mr. Bruni
Burkina Faso (CAT/C/BFA/1)	Mr. Gaye	Mr. Domah
Kyrgyzstan (CAT/C/KGZ/2)	Mr. Tugushi	Ms. Gaer
Latvia (CAT/C/LVA/3-5)	Ms. Sveaass	Ms. Belmir
Mozambique (CAT/C/MOZ/1)	Mr. Mariño	Mr. Grossman
Poland (CAT/C/POL/5-6)	Mr. Mariño	Mr. Wang
Portugal (CAT/C/PRT/5-6)	Mr. Grossman	Ms. Sveaass
Uzbekistan (CAT/C/UZB/4)	Ms. Gaer	Mr. Tugushi

B. Fifty-second session

Report	*Rapporteur 1*	*Rapporteur 2*
Cyprus (CAT/C/CYP/4)	Mr. Modvig*	Mr. Domah
Guinea (CAT/C/GIN/1)	Mr. Grossman	Mr. Gaye
Holy See (CAT/C/VAT/1)	Ms. Gaer	Mr. Tugushi

Report	*Rapporteur 1*	*Rapporteur 2*
Lithuania (CAT/C/LTU/3)	Mr. Tugushi	Mr. Domah*
Montenegro (CAT/C/MNE/2)	Mr. Tugushi	Ms. Belmir
Sierra Leone (CAT/C/SLE/1)	Ms. Belmir	Mr. Domah
Thailand (CAT/C/THA/1)	Ms. Gaer*	Ms. Gaer
Uruguay CAT/C/URY/3	Mr. Grossman	Mr. Gaye

* Replacing Mr. Bruni, who was absent for medical reasons during part of the fifty-second session.

Annex XIII

Summary account of the results of the proceedings concerning the inquiry on Lebanon

A. Introduction

1. The confidential inquiry on Lebanon conducted in accordance with article 20 of the Convention began in May 2012 and ended in November 2013. The Committee's inquiry included an in situ visit to Lebanon, pursuant to paragraph 3 of the same article.[a] Although the present summary account may not reflect all the findings included in the inquiry report, it contains the Committee's full conclusions and recommendations, as well as the State party's written replies.

2. The findings presented in the inquiry report were based largely on information brought to the attention of the mission of inquiry (hereafter "the mission") during the visit, which took place from 8 to 18 April 2013. In drafting the inquiry report, the Committee also studied the information provided by the authorities before and during the visit, as well as the information provided by human rights non-governmental organizations and other civil and political actors. Most of the allegations discussed in the inquiry report were gathered in the course of direct interviews with witnesses or persons who reported having personally suffered acts of torture or ill-treatment.

3. The visit was undertaken by the following members of the Committee: Essadia Belmir, Fernando Mariño Menéndez (acting as the head of the mission) and Nora Sveaass. The Committee members were accompanied by Hicham Benyaich, a forensic doctor, as the medical expert. In addition, the delegation was assisted by two human rights officers from the Office of the United Nations High Commissioner for Human Rights (OHCHR), two United Nations security officers, five interpreters, and representatives of the OHCHR Regional Office for the Middle East. The Committee expresses its particular appreciation for the excellent support provided to the delegation.

4. During its visit to Lebanon, the mission visited the Beirut metropolitan area and the municipalities of Saida, Nabatieh, Tyre, Tripoli and Zahle. In Beirut, it had the opportunity to meet with the Minister of Justice, the Director General of the Ministry of Foreign Affairs, the General Prosecutor, the President of the Judicial Council, the Director of Military Intelligence, the Director General of the Internal Security Forces (ISF) of the Ministry of the Interior and Municipalities, the Director General of the General Security Office (GSO), and the Rapporteur of the Parliamentary Human Rights Committee. The delegation also held talks with the United Nations Office on Drugs and Crime Officer-in-Charge in Lebanon and the OHCHR Regional Representative for the Middle East (ad interim).

5. In addition, the delegation had meetings with representatives of several international and local non-governmental organizations and other civil society actors working in areas of concern to the Committee. In order to collect first-hand information on the practice of torture, the members of the delegation met with persons who themselves had allegedly been victims of torture and/or their legal representatives. The Committee wishes to thank them for the valuable information provided.

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[a] See chapter V, paras. 107–110, of the main body of the present report.

6. In the course of the visit, the delegation visited 20 detention centres throughout the country, including police stations, courthouse holding facilities, civilian prisons and other detention facilities under the authority of the ISF Information Branch and the Ministry of Defence. The mission also visited the GSO administrative detention centre for irregular migrants in the Adlieh district of Beirut. The visits were primarily, but not exclusively, for the purpose of meeting individual detainees. The mission also observed the conditions of detention and had discussions with law-enforcement officials, prison officers and medical personnel present in the detention centres visited. A total of 216 individual interviews were conducted over a period of 11 days.

B. Findings of the mission of inquiry

1. Information provided by the authorities

7. During meetings with the Committee's mission, executive authorities and their officials offered reassurances of the Government's commitment to human rights and its determination to address the problem of torture, emphasizing the importance of the legal changes under way and reiterating the authorities' wish to cooperate with the Committee. The mission was informed that a bill to amend the Penal Code and the Code of Criminal Procedure, which had been submitted to Parliament in December 2012, provided for the introduction of the crime of torture into the Lebanese penal system. It was also informed that a draft law to establish a national human rights institution, including a national preventive mechanism in accordance with article 17 of the Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, had been endorsed by the Parliamentary Law Committee but had not yet been tabled for approval by the Parliament. The Lebanese authorities further reported that a draft national strategy on human rights had been launched in December 2012, which contained a chapter focusing specifically on torture and relevant sections on enforced disappearances, fair trials, prison conditions and the reform of the prison system.

8. The occurrence of torture and ill-treatment, often described as isolated incidents, was acknowledged by representatives of the authorities. Notably, the Prosecutor General indicated that most of the reported cases occurred in police stations and investigation centres. Nonetheless, the authorities were unable to provide comprehensive statistics on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment. They were also unable to provide information on redress and compensation measures, including the means of rehabilitation ordered by the courts and/or actually provided to the victims.

9. According to the information provided by the Lebanese authorities, the ISF anti-torture committee had carried out 46 visits to places of detention and investigated a total of 26 incidents in 2012. However, the information received contained scant information on the exact nature of the violations and the disciplinary sanctions meted out to perpetrators. The mission also received information on the training courses offered to ISF members on the handling of detainees and on non-violent investigation techniques. The mission requested but did not receive information about the evaluation of those training programmes and their effectiveness. It was also reported that training courses on the use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) had been provided to judges and members of the ISF anti-torture committee in 2011 and 2012.

2. Information provided by human rights non-governmental organizations and other civil society actors

10. During the visit, the mission also received information and heard allegations from a wide range of civil society actors and victims themselves, who indicated that torture and ill-treatment took place mainly during arrest and interrogation in certain police stations as well as in detention facilities under the responsibility of ISF and the military intelligence services. Moreover, data from non-governmental organizations fully supported the allegations contained in the submission of Alkarama to the Committee. The mission was informed that those at particular risk of torture and ill-treatment included individuals who had been held in custody for investigation purposes, especially those accused of involvement in espionage or terrorism and other serious crimes. In addition, there were persistent reports of torture and ill-treatment of Syrian nationals, Palestinians, persons with limited financial means who were arrested for minor crimes and others held in police custody for alleged drug use, sex work or homosexuality, in particular by ISF members attached to the Drug Repression Bureau and personnel enforcing "morality-related" laws. The mission also received reports of unlawful arrest and torture by non-State actors, such as militias affiliated to Amal and Hizbullah, and the subsequent handing over of the victims to the Lebanese security agencies.

11. According to the information received, the methods of torture used by the various security agencies ranged from beatings to more severe and elaborate torture techniques, of which *ballanco* (hanging by the wrists, which are tied behind the back) and *farrouj* (suspension by the feet with the hands tied together to an iron bar passed under the knees) were said to be the most widely used. The sources also expressed concern over the use of solitary confinement in detention centres under the authority of the ISF and military intelligence services. In addition, the mission received information on the use of forced anal examinations on men arrested on charges of engaging in "sexual relations against nature", which are criminalized under article 534 of the Lebanese Penal Code.[b]

3. Information obtained in places of detention

12. The mission was able to visit two police stations in Beirut and Nabatieh; the courthouse holding facilities at the Palais de justice in Beirut, Nabatieh and Tripoli; three detention facilities under the authority of the ISF Information Branch, in Beirut, Saida and Tripoli; four detention facilities under the authority of the Ministry of Defence, in Beirut and Saida; six civil prisons, in Beirut, Nabatieh, Tripoli, Tyre and Zahle, including two women's detention facilities, in Tripoli and Beirut; and the GSO administrative detention centre for irregular migrants in the Adlieh district of Beirut.

13. At the Hobeish police station in Beirut, the mission received numerous and consistent allegations of torture and ill-treatment of inmates by ISF officers, either upon arrest or later, in police custody during interrogation. Persons interviewed who were accused of drug-related offences alleged that some ISF officers and members of Hizbullah had beaten them up in the southern suburbs of Beirut while others videoed the beatings on their mobile phones. In various cases, torture and ill-treatment allegedly continued during transfer to police facilities and after arrival at the police station. Some of those statements were corroborated by forensic evidence collected by the mission's forensic doctor.

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[b] Other issues raised by human rights non-governmental organizations and other civil society actors included, inter alia, the failure in practice to afford all detainees with all fundamental safeguards from the very outset of their deprivation of liberty; the impunity for acts of torture and ill-treatment; and the high levels of overcrowding in prisons.

14. The mission did not hear any allegations of torture or other forms of physical ill-treatment of persons deprived of their liberty at the courthouse facilities in Tripoli and Nabatieh. However, at the Palais de justice in Beirut, the mission heard several accounts of recent torture and ill-treatment of suspects by members of the military intelligence services, inflicted mostly during interrogation with a view to obtaining a confession.

15. As regards civil prisons, the Committee's mission heard only a few allegations of ill-treatment by prison staff, which referred to sanctions involving physical punishment and harsh conditions of detention in disciplinary cells. The mission, however, gathered testimonies from detainees indicating that torture and ill-treatment were common upon arrest and during interrogation. It documented numerous credible allegations of torture in police stations and other detention centres under the authority of ISF and the military intelligence services. Several detainees claimed that they had told the examining magistrate about the treatment to which they had allegedly been subjected while in custody and about their confessions having been made or signed under torture or ill-treatment, but their allegations had not been investigated. The mission also found that none of the inmates interviewed had been able to benefit from the presence and assistance of a lawyer during interrogation, and those who had access to counsel had met their lawyer for the first time when they went to court. The mission also found out that very few of them were aware of their right to request a medical examination.

16. In the course of the visits to prisons, it quickly became clear to the mission that there were no effective and functioning independent mechanisms for the submission of complaints of torture and ill-treatment.

17. At the Baabda women's prison, the medical personnel indicated that, on several occasions, the physical examinations conducted in that establishment had revealed clear signs of torture, including sexual violence. The mission was told that, in one case, the physical examination showed superficial injuries on the skin that could have resulted from the application of electrical current on the feet of one inmate.

18. At the Roumieh Central Prison in Beirut, the mission focused its attention on the situation of inmates who were arrested during and after the clashes between Fatah Al Islam members and Lebanese Armed Forces at the Nahr al-Bared camp in 2007. Almost half of the inmates interviewed in the Roumieh Prison B building alleged that they had been severely tortured by ISF and/or military interrogators. Allegations included threats against the inmates' relatives. It was explained that some of them continued to suffer from pain associated with the type of torture that they had been subjected to. The mission also received various allegations of torture and ill-treatment taking place in vehicles used for the transportation of inmates. Medical evidence consistent with some of those allegations was gathered by the mission's medical expert.

19. In that regard, during its visit to the Information Branch premises at the ISF Directorate-General in Ashrafieh in Beirut, the mission observed that the five interrogation rooms located on the seventh floor of the building and their contents (that is, an interrogation chair fixed to the floor and eye-bolts on the floor next to it, electrical connection boxes fitted into the floor, and small holes in the floor and the ceiling, among other things) matched the description received prior to its visit from alleged victims of torture held in Roumieh Central Prison, who claimed to have been subjected to torture while in detention under the authority of ISF. Although the interrogation rooms were fitted with one-way mirrors and audio/video recording equipment, the staff on duty were unable to explain the exact policy for the use and retention of recordings, or whether they had already been requested for or used in judicial proceedings. At the time of the visit two men were being held in the cells. One of them had been ill-treated during arrest and taken to hospital to have his injuries treated. In that case the victim's testimony was corroborated by forensic evidence. In addition, the members of the mission concluded that the medical

register of that detention facility was not authentic, which led them to believe that it had been prepared specifically for its visit. The members of the mission found in a storeroom a very low iron chair with a rounded, c-shape neck holder. Although they were told by the ISF personnel on duty that the chair had been used to take photographs of detainees, this type of chair matched the description given to the mission by an alleged victim, as well as the information provided by Alkarama in its first submission regarding an adjustable metal chair allegedly used to stretch the spine, putting severe pressure on the victim's neck and legs.

20. When the mission visited the military intelligence detention facilities in Saida, it was prevented from consulting the custody register by the Head of the Lebanese Armed Forces Intelligence Branch in the South Region Command. During the inspection of this facility, the mission found five empty cells in a basement level of the building, although it had been previously told that there was no holding area.

21. On the day of the mission's visit, the prison of the Directorate of Military Intelligence at the Ministry of Defence Headquarters in Al Yarze (Beirut) was empty. During the meeting with the mission, the Chief of Investigations acknowledged the existence of allegations of torture reportedly occurring in that detention centre. According to the forensic doctor accompanying the mission, the medical register was not properly kept and the prison doctor was not familiar with the Istanbul Protocol. The mission noted that there were several car battery units on the floor of the recording room adjacent to the interrogation room in the two-floor basement. The mission also found a wheelchair stored to the side of a corridor that, according to the explanation given by the military personnel on duty, was "to carry disabled people". In another corridor, the mission found two low benches and a broken wooden bar, but no one could explain their use.

22. At the GSO administrative detention centre for irregular migrants in the Adlieh district of Beirut, the mission received various allegations of ill-treatment of detainees by ISF and GSO officers. The mission noted that some of the detainees had expressed their fear of reprisals by staff for speaking with the mission, while others had been reluctant to speak about their experiences in detention.

4. Other issues of concern: material conditions of detention (accommodation, food and hygiene) and access to health care

23. As regards material conditions at the prison establishments visited, the inquiry report noted the Government's decision to construct three new prisons and refurbish the Roumieh Central Prison. However, the mission observed conditions of severe overcrowding in all prisons visited, with a number of establishments holding more than double their capacity. The excessive delays in the administration of justice and high rates of pretrial detention, as well as the frequent transfer of detainees from Roumieh Central Prison to other facilities, were found to be the primary causes for prison overcrowding. The conditions of detention in those establishments were appalling, especially the poor hygiene in detention areas, the limited access to medical services, including specialized health care, and the non-separation of pretrial and convicted prisoners. Furthermore, in some of the civil prisons visited self-government and inter-prisoner violence were an issue.

24. The appalling conditions observed in the GSO detention centre were exacerbated by the fact that most detainees were confined to their overcrowded cells, without proper ventilation or natural light, for 24 hours a day. Detainees interviewed by the mission complained about the poor quality of the food and water, skin rashes and the inadequate sanitation conditions in their cells, which were infested with insects. Some of them had been held in these conditions for over a year. With regard to health-care services, Caritas staff confirmed that detainees did not receive a medical examination upon arrival.

25. The majority of the holding cells in the police stations and courthouses visited by the mission were in a poor state of hygiene and repair, and access to natural light and ventilation was inadequate. At the Hobeish police station in Beirut and the Palais de justice in Beirut, conditions of detention were particularly appalling. The underground courthouse holding facility in Tripoli was also in a dilapidated condition.

C. Conclusions and recommendations

Conclusions

26. **At the end of the inquiry procedure, the Committee reached the conclusions listed below.**

"27. **The Committee recalls that, in 1992, it defined the systematic practice of torture as appears below (A/48/44/Add.1, para. 39) and, since then, has applied that definition to all of its inquiries under article 20:**

> **The Committee considers that torture is practised systematically when it is apparent that the torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question. Torture may in fact be of a systematic character without resulting from the direct intention of a Government. It may be the consequence of factors which the Government has difficulty in controlling, and its existence may indicate a discrepancy between policy as determined by the central Government and its implementation by the local administration. Inadequate legislation which in practice allows room for the use of torture may also add to the systematic nature of this practice.**

28. **The findings and conclusions of the Committee, which are predominantly based on its observations during the visit to Lebanon, have been assessed thoroughly in order to determine whether all the elements of the above-cited definition were met. Owing to word-limit constraints, only the most pertinent findings will be discussed in detail.**

29. **Torture in Lebanon is a pervasive practice that is routinely used by the armed forces and law enforcement agencies for the purpose of investigation, for securing confessions to be used in criminal proceedings and, in some cases for punishing acts that the victim is believed to have committed. Evidence gathered throughout the country during the course of the inquiry indicates a clear pattern of widespread torture and ill-treatment of suspects in custody, including individuals arrested for State security crimes and other serious crimes, as well as foreigners, especially Syrians and Palestinians, and individuals arrested in the course of civil policing, in particular lower-income individuals arrested for minor crimes.**

30. **In the course of the visit, the mission received a significant number of credible and consistent allegations of recent and past acts of torture and ill-treatment, and gathered strong forensic evidence corroborating the alleged victims' testimony. Of the 216 detainees interviewed by the mission, 99 stated that they had been subjected to acts of torture by law enforcement officials, especially members of ISF and of the military intelligence services. Almost all of the reported cases had occurred during arrest and the initial phase of detention, especially during interrogation sessions. Many of the detainees interviewed by the mission assumed that verbal and physical violence was standard procedure in relation to detainees.**

31. Numerous persons, in particular detainees who had been held in solitary confinement, alleged that they had been subjected to torture on multiple occasions in various detention centres and by members of different security agencies. In this connection, the Committee notes with great concern the allegations received by the members of the mission with regard to unlawful arrests and torture by non-State actors, such as militias affiliated to Hizbullah and other armed militias, and the subsequent handover of the victims to the Lebanese security agencies. It should also be noted that the vast majority of Syrians interviewed by the mission reported that they had been subjected to torture. The mission detected that there was a general fear of being subjected to torture or ill-treatment in all places of detention visited, resulting in constant psychological stress for detainees.

32. This situation seems to a large extent to be the result of the deliberate disregard for fundamental legal safeguards for persons deprived of their liberty. The shortcomings in the practical implementation of the right to a lawyer from the outset of detention and the lack of independent medical examinations contribute to the impunity of perpetrators. Moreover, the brutality of the methods of torture used in numerous places around the country, the presence of non-standard items and even equipment specifically designed to inflict torture, and the heavy scarring on victims' bodies observed during medical examinations suggest the widespread use of torture and the impunity with which perpetrators can commit acts such acts.

33. The penal justice system is dysfunctional. For example, procedural notifications are not processed on time, thus depriving detainees of the right to appeal decisions; related penal cases are not merged; lawyers are not present, especially during interrogation; the conduct of examining judges is often unprofessional; there are unjustified delays between the first and subsequent hearings; it is often difficult for detainees to be brought before a judge owing to a lack of transport; and there is a lack of coordination between judicial authorities, the police and military authorities.

34. Factors that contribute to the current impunity for perpetrators include the lack of an independent and effective complaints mechanism for receiving allegations of torture; the failure of the courts to order investigations into allegations that evidence has been obtained through torture; and the lack of ex officio investigations. It is of particular concern that the State party does not provide mandatory training programmes to ensure that all public officials, including law-enforcement officials, military personnel and members of the judiciary, are fully aware of the provisions of the Convention. Those factors result in the absence of investigation, prosecution and conviction of perpetrators of acts of torture, as well as the absence of redress for victims.

35. In the view of the Committee, the conditions of detention observed in most of the detention facilities are of serious concern and could be described as cruel, inhuman and degrading and even amounting to torture in some cases. In particular, the conditions observed in the GSO administrative detention centre were much worse than the conditions in prisons, despite the fact that those held there had not committed any criminal offence, but had merely breached administrative regulations.

36. The Committee notes that the Convention against Torture places an obligation on Lebanon to ensure that its provisions are enshrined in domestic law and observed in practice. Pursuant to article 2 of the Convention, the State party should have taken effective legislative, administrative, judicial and any other appropriate measures to prevent torture, end impunity for perpetrators of acts of torture and comply with all its relevant international obligations, particularly given that the Convention entered into force in the Lebanese domestic legal order over 12 years ago.

37. **In the light of the above conclusions, the Committee considers that, in accordance with [the above-mentioned definition of systematic practice of torture] and its past practice, torture is, and has been, systematically practised in Lebanon, especially in the context of investigation and for the purpose of obtaining confessions."**

Recommendations

38. **The recommendations made by the Committee to the State party at the end of the inquiry procedure are fully reproduced below:**

"(a) Unambiguously reaffirm the absolute prohibition of torture, publicly condemn practices of torture and issue a clear warning that anyone committing such acts or otherwise complicit or participating in torture will be held personally responsible for such acts before the law and will be subject to criminal prosecution and appropriate penalties;

(b) Define and criminalize torture as a matter of priority and as a concrete demonstration of Lebanon's commitment to combat the problem in accordance with articles 1 and 4 of the Convention against Torture;

(c) Amend its legislation to provide that an order from a superior officer or a public authority may not be invoked as a justification of torture, and to ensure that acts of torture are not subject to any statute of limitation;

(d) Strengthen the fundamental legal safeguards in the Code of Criminal Procedure and adopt effective measures to ensure that all detainees enjoy in practice all fundamental legal safeguards, including the right to have access to counsel at the time of arrest and to have their lawyer present during interrogation; to be assisted by an interpreter, if necessary; to be informed of the reasons for arrest and of any charges against them; to inform promptly a close relative or third party about their arrest; to be brought before a judge without delay; and to be examined by an independent physician without having to obtain prior authorization from the prosecutor;

(e) Take all necessary measures to ensure that the penal justice system functions efficiently to protect the fundamental rights of detainees during arrest and investigation, in pretrial detention and after conviction;

(f) Provide effective guarantees to all detainees enabling them to challenge the lawfulness of their detention before an independent court;

(g) Consider establishing a State-sponsored legal aid programme;

(h) Establish a national human rights institution in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) and ensure it has the resources needed to fulfil its mandate effectively;

(i) Ensure that the ISF anti-torture committee receives the necessary resources to fulfil its mandate, and ensure that it reports publicly on its activities on a regular basis, including on the results of its investigations;

(j) Ensure the scrupulous maintenance of custody registers and of a complaints register in every detention facility; and ensure that items that constitute evidence are labelled, recorded and keep in evidence storage units;

(k) Ensure that any evidence obtained as a result of torture is not used. Judges and prosecutors should routinely enquire how persons brought from police or military custody have been treated and, if there is any suspicion of torture or ill-

treatment, order an independent medical examination in accordance with the Istanbul Protocol, even in the absence of a formal complaint from the defendant;

(l) Ensure that confessions made by persons in custody without the presence of a lawyer and which are not confirmed before a judge are inadmissible as evidence;

(m) Ensure that interrogation sessions are recorded and that all persons present during the recording are identified. The practice of blindfolding and hooding should be explicitly forbidden;

(n) Ensure that any use of solitary confinement is limited to exceptional circumstances and subject to regular judicial supervision;

(o) Establish an independent complaints mechanism with the authority to investigate promptly, impartially and effectively all reported allegations of and complaints about acts of torture and ill-treatment. Complainants must be protected against reprisals;

(p) Undertake in-depth investigations into all allegations of torture and ill-treatment, especially of those arrested in 2007 in connection with the Nahr al-Bared conflict, and ensure that the alleged perpetrators are duly prosecuted and, if found guilty, handed down penalties commensurate with the grave nature of their acts;

(q) Entrust forensic investigations to independent doctors trained in documenting physical and psychological evidence of torture, in particular through the use of the Istanbul Protocol;

(r) Establish a list of independent doctors trained to conduct medical examinations in cases of allegations of torture and bring it to the attention of all legal professionals;

(s) Guarantee full respect for human dignity; seek alternatives, such as sonograms and imaging, to intrusive body searches; and prohibit anal searches or tests for men suspected of homosexuality and virginity tests for women;

(t) Complete the process of establishing or designating the national preventive mechanism in accordance with the Optional Protocol to the Convention against Torture and in keeping with the guidelines on national preventive mechanisms (CAT/OP/12/5). The State party should ensure that the national preventive mechanism is endowed with sufficient resources to do its work effectively on a fully independent basis;

(u) Continue to provide mandatory training to all public officials, particularly ISF members and military personnel, to ensure that they are fully aware of the provisions of the Convention against Torture and that breaches are not tolerated but investigated and perpetrators brought to trial. The State party should continue to provide training on the handling of detainees and non-violent investigation techniques; assess the effectiveness and impact of training programmes and education on reducing the incidence of torture and ill-treatment; and support training on the use of the Istanbul Protocol for medical personnel in detention centres and hospitals and other officials involved in the investigation and documentation of cases of torture;

(v) Ensure that the conditions of detention in the country's prisons are compatible with the Standard Minimum Rules for the Treatment of Prisoners and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules). The State party should also ensure that different categories of inmates are accommodated in separate facilities or units, taking into account their gender, age and the reason for their imprisonment;

(w) Take action to remedy the poor conditions observed in detention facilities. The State party should conduct a nationwide audit of the material state of all detention facilities and establish a plan of action for the cleaning, renovation and refurbishment of facilities. The State party should also improve working conditions for prison staff;

(x) Increase efforts to remedy prison overcrowding, in particular by instituting alternatives to custodial sentences, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the Bangkok Rules. Discontinue the system of additional prison time for unpaid fines;

(y) Re-establish the full authority of the State in all prisons, especially in Roumieh Prison B building;

(z) Take steps to prevent inter-prisoner violence, including sexual violence, and investigate all such incidents so that the alleged perpetrators are brought to trial and victims protected;

(aa) Strengthen health services in prisons by providing medical supplies, drugs and qualified health personnel, including dentists and psychiatrists, establish a mechanism to monitor the health status of prisoners and integrate detention centres into national public health programmes. Ensure that medical and paramedical personnel in prisons are independent of the police and the army and, ideally, bring them under the supervision of the Ministry of Health;

(bb) Redouble efforts to conclude the transfer of the prison system from the Ministry of the Interior and Municipalities to the Ministry of Justice;

(cc) Authorize NGOs to undertake prison monitoring activities, and adopt all appropriate measures to enable them to carry out periodic visits;

(dd) Provide victims of torture and ill-treatment with redress, including fair and adequate compensation, and as full a rehabilitation as possible, taking due account of the Committee's general comment No. 3 (2012) on the implementation of article 14 of the Convention by States parties (CAT/C/GC/3). Ensure that appropriate rehabilitation programmes, including medical and psychological assistance, are provided to all victims of torture and ill-treatment;

(ee) Submit its initial report under article 19 of the Convention against Torture;

(ff) Compile disaggregated statistical information relevant to the monitoring of the Convention, including data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment;

(gg) Consider making the declaration under article 22 of the Convention;

(hh) Authorize the publication of the report on the 2010 visit to Lebanon of the Subcommittee on Prevention of Torture and the Government's response to the Subcommittee's recommendations."

39. The Committee invited the State party to authorize the publication of the inquiry report and provide for its wide dissemination, in the appropriate languages, and through official websites, the media and non-governmental organizations.

40. The Committee demanded urgent, strong and coordinated action by the State party to eradicate torture. Owing to the seriousness of the situation, the Committee considered that Lebanon should implement, as a matter of particular urgency, the recommendations contained in paragraph 77 (a), (d), (i), (t), (v), (y), (cc) and (ee) of the report.

41. In order to assess the implementation of those urgent recommendations, and progress with all the others, the Committee requested the State party to submit a follow-up report by 22 November 2014.

D. Comments and observations of Lebanon concerning the inquiry report adopted by the Committee

42. By communication dated 29 January 2014, Lebanon provided a reply to the findings and conclusions of the Committee.

43. The State party informed the Committee that the human rights committees of the Lebanese National Assembly had unanimously approved the project for a national preventive mechanism against torture and the establishment of a national human rights institution, indicating that the project featured on the agenda of the National Assembly.

44. According to the State party, the inquiry report did not take into consideration the challenges and difficulties that the country had faced and continued to face in a variety of spheres, as those were directly responsible for the failure of the country's officials to achieve their aspirations to strengthen the legal measures relating to detainees and prisoners and to develop the infrastructure of prisons and detention centres as quickly as desired. The State party further indicated that, within available resources, the State authorities concerned were doing their utmost, amid trying political, security and economic circumstances in the region's highly dangerous and sensitive atmosphere and in the shadow of terrorist threats affecting several areas of the country, to put in place appropriate legal provisions, review the rules of the handling of prisoners in detention centres and improve prison living conditions.

45. The State party indicated that the Ministry of Justice and the Ministry of the Interior and Municipalities and the Ministry of National Defence were making sustained efforts to investigate complaints submitted to them concerning allegations of torture or humiliation during interrogation. Those ministries had circulated to their relevant agencies the rules of conduct of investigation and interrogations and had formed special committees to monitor compliance.

46. The State party also informed the Committee that it had requested the authorities with jurisdiction over the places of detention where rights of detainees and prisoners were said to have been violated to conduct an urgent investigation and, in the event that the information was substantiated, to take the measures provided for in Lebanese law against the perpetrators and to work to prevent any future reoccurrence.

47. According to the reply, the State party concurred with the mission's comments about overcrowding, noting that the situation had worsened due to the increase in the number of prisoners and detainees, particularly those of Syrian nationality. It was emphasized that the authorities concerned were pursuing their efforts to address prison overcrowding in accordance with a multi-pronged plan to construct new prison buildings and speed up judicial decision-making. Furthermore, the National Assembly had approved Act No. 216 of 30 March 2012, which set the prison year at nine months.

48. The State party said that the cases of torture, the torture methods and the abuse of detainees and prisoners described in the inquiry report, if indeed any of them had occurred, were legally unacceptable acts, and that the Lebanese authorities had requested the entities concerned to investigate, prosecute and punish those acts in accordance with Lebanese law. The State party maintained that any proven violations of the rights of arrested, detained or imprisoned persons remained isolated cases.

49. The State party considered that the mission had treated with scepticism the information provided by the Lebanese authorities, while the majority of information obtained by the mission from non-governmental organizations and civil society actors had been heeded and accepted as trustworthy.

50. The State party claimed to be utterly astounded at the conclusions of the Committee. The Government also expressed great surprise at the logic employed by the mission in reaching the conclusions set out in the report, maintaining that the conclusions were based on statements and testimonies that had not been subjected to any close scientific or legal examination.

51. Finally, the State party took issue with the mission's view that torture was systematically practiced in Lebanon, and reaffirmed its disagreement with the view that the Committee's definition of [systematic] torture applied in the case of Lebanon.

Annex XIV

Decisions of the Committee against Torture under article 22 of the Convention

Decisions on merits

Communication No. 366/2008: *Haro v. Argentina*

Submitted by:	Eduardo Mariano Haro (represented by counsel, Ms. Silvia de los Santos)
Alleged victim:	The complainant
State party:	Argentina
Date of complaint:	18 November 2008 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 23 May 2014,

Having concluded its consideration of communication No. 366/2008, submitted to the Committee against Torture by Eduardo Mariano Haro under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

Decision under article 22, paragraph 7, of the Convention against Torture

1. The author of the complaint is Eduardo Mariano Haro, an Argentine national, born on 17 November 1981. He claims to be a victim of violations by Argentina of articles 1, 2, 10–14 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. At the time of submission of the complaint, the author was being held in Prison Unit No. 6 in Rawson in Chubut province. The author is represented by Ms. Silvia de los Santos.

Factual background

2.1 The author lives in the city of Comodoro Rivadavia and worked as a mason before his arrest. He was arrested in 2001 and convicted by the First Criminal Chamber of Comodoro Rivadavia (hereinafter "the First Chamber") on 21 June 2002 for the offences of voluntary manslaughter and serious bodily injury and sentenced to 12 years in prison. The author alleges that the trial was fraught with irregularities.

2.2 The author alleges that on 17 November 2003, while he was being held in local police station No. 2 of Comodoro Rivadavia, he was subjected to acts of violence, during which he suffered a superficial cut to the front of the neck and traumatic total ablation of the right testicle and partial ablation of the left testicle. The author was assisted by the fire brigade, who took him to Comodoro Rivadavia Regional Hospital (hereinafter "the Regional Hospital").[1] The author alleges that on the same day his father was informed in a note from the chief officer of the police station that the author had deliberately injured himself. His father went to the Regional Hospital at once. The author was able to speak with him briefly, but only managed to tell him that "it was the police" before they were separated by the police officers who were at the hospital. However, the author alleges that he was able to recount all that had happened to a doctor, who in turn informed his father.

2.3 On 19 November 2003, the author's father lodged a complaint about the police officers with the Public Prosecution Service of Comodoro Rivadavia. The Office of Prosecutor No. 2 of Comodoro Rivadavia immediately opened an investigation and requested information from the Regional Hospital regarding whether it was possible that the author could have injured himself and about his mental health in general. The Office consulted a forensic doctor of the judiciary to ascertain whether the author was fit to make a statement; asked local police station No. 2 to send it a record of all proceedings; and summoned the accused police officers, the police physician and persons detained in the same police station to make statements.

2.4 On 20 November 2003, the author was admitted to the mental health unit of the Regional Hospital. On the same day, a forensic doctor informed the Public Prosecution Service that the author was recovering from testicular surgery under sedation and was therefore not in a position to make a statement. On 4 December 2003, the Regional Hospital transmitted to the Public Prosecution Service a psychiatric report indicating that the author had experienced a brief psychotic episode; that he was suffering from a serious antisocial personality disorder; that he had initially been violent and uncooperative and shown psychopathic tendencies; and that he had been making good progress, and could therefore be discharged with outpatient follow-up. On 9 December 2003, the author was discharged and detained in local police station No. 1.

2.5 The author alleges that on 10 December 2003, the Assistance Office for Detainees and Convicted Prisoners appeared before the First Chamber and expressed the opinion that, in view of the author's complaint against members of the police, his state of health and the lack of security and salubrity in the detention centre, it was recommended that he should be detained in the mental health unit of the Regional Hospital or, failing that, placed under house arrest.

2.6 On 12 December 2003, the Assistance Office for Detainees and Convicted Prisoners submitted an application for habeas corpus on behalf of the author, requesting a cessation of his detention in police station No. 1 or his house arrest. Meanwhile, the author's father requested that the author be transferred to Prison Unit No. 14 in Esquel. In the end, the author was transferred to police station No. 6. However, he claims that on 15 December 2003, his parents informed the First Chamber that he did not have a suitable cell or bed, which was affecting the healing of his wounds, and that they asked for a medical examination to be ordered to check the state of the author's wounds. This request was rejected by the Chamber. Both the Assistance Office and the author's father reapplied for a transfer.

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[1] The Committee also takes note of the police report of 17 November 2003, in which it is noted that the police officers who were on duty at the police station declared that the author had deliberately injured himself; that a sergeant found him in his cell, sitting on a pillow on the floor, completely naked and with blood on his chest; that there was an organ on the floor that looked like a testicle; that the author said that a spell had been cast on him; that the assistance of the fire brigade and a doctor was requested; and that the duty judge, the secretary of the First Chamber, the Criminal Division and the duty prosecutor were informed by telephone. When the cell was inspected, a metal object bearing blood stains was found and the body parts found were sent to the pathological anatomy unit of the Regional Hospital. Some detainees who were in the same police station as the author also stated that the author had deliberately injured himself.

2.7 On 6 January 2004, the mental health unit of the Regional Hospital issued a report in which it was stated that the author had been diagnosed as suffering from psychosis, was incapable of controlling and managing his actions, and was displaying depressive symptoms and manipulative and aggressive behaviour. Given the risk that he might pose to the safety of other patients, it was suggested that he be placed in a specialist health-care institution equipped with a penitentiary unit and permanent psychiatric care.

2.8 On 7 January 2004, the First Chamber applied to the government of Chubut province for a place in an appropriate detention facility for the author. On 20 January 2004, the Prison Service concluded that it was unnecessary to transfer the author to a specialist centre since he had been discharged from the mental health unit of the Regional Hospital, was continuing to receive the recommended medication and could have check-ups as an outpatient.

2.9 On 17 March 2004, the Criminal Unit of the Police informed the Public Prosecution Service that the expert's report on the object found in the author's cell, with which he had allegedly injured himself, did not provide any information that might be useful to the investigation.

2.10 On 23 March 2004, a forensic doctor informed the Public Prosecution Service that the nature of the author's injuries was such that they could have been self-inflicted and caused by the object found in his cell, and that the author had a psychotic disorder that could cause him to be aggressive and dangerous, both to himself and to others.

2.11 On 15 April 2004, the Chief Prosecutor of Comodoro Rivadavia judicial district ordered the case initiated by the complaint of the author's father to be closed, on the grounds that no evidence of an offence had been found. In his decision, the Prosecutor referred to the testimonies received from other detainees who were being held in adjacent cells and from third parties from outside the police force, including members of the fire brigade. He noted that, according to the reports of the forensic medical team, which in turn had taken into account the author's medical history, including the reports of the psychiatric unit of the Regional Hospital, and in view of the author's psychological and aggressive condition, he could have deliberately caused severe injuries to himself. Furthermore, the Prosecutor pointed out that the author had claimed to have been attacked by five or six police officers whom he knew by sight but had been unable to identify them or describe any of their physical characteristics. This did not seem credible, especially since they were supposedly police officers who had been on duty at the place of detention for some time.

2.12 Between February and June 2004, the author's father reported to the First Chamber on the author's conditions of detention on several occasions and repeated his request for a transfer to another prison unit. However, his requests were rejected. On 11 August 2004, the father submitted an application for habeas corpus, which was denied by the First Chamber. Subsequently, on 1 September 2004, the Assistance Office for Detainees and Convicted Prisoners applied to the First Chamber to guarantee minimum conditions of detention for the author.

2.13 On 3 September 2004, by order of the First Chamber, the author was transferred to unit No. 20 of the Borda psychiatric hospital in Buenos Aires. However, the author alleges that on 17 September 2004, the attending doctors applied to the judicial authorities for his discharge since they believed that he was not suffering from any illness that would justify his internment in the centre.

2.14 Between November 2004 and April 2006, the author was moved between Prison Unit No. 15 in Río Gallegos and Unit No. 6 in Rawson, then back to Unit No. 15 and again to Unit No. 6.

2.15 On 23 August 2006, the author's father and sister asked the Attorney-General of Chubut province to reopen the case concerning the author's castration, and alleged that the investigation carried out was insufficient and based on questionable medical reports. In this regard, they noted that, on 13 June 2006, an interdisciplinary technical team from Prison Unit No. 6 had issued a report containing conclusions on the injuries sustained on 17 November 2003 that were contrary to those reached in the criminal investigation, in that this new report did not state that the testicular ablation had taken place on that date.

2.16 In response to the request, the Office of the Attorney-General commissioned officials from the Public Prosecution Service and Trelew city police to analyse the proceedings related to the complaint of castration submitted by the author's father in 2003.

2.17 On 9 October 2006, these officials informed the Attorney-General that, on the basis of the evidence contained in the file on the case initiated in relation to the author's castration and the statements obtained from the persons questioned, there was nothing to indicate that an offence had been committed and, on the contrary, all the evidence collected suggested that the author had deliberately injured himself. There were therefore insufficient grounds to reopen the case. They drew attention to statements given by a number of persons who had been detained in the same unit as the author and who maintained that the author had injured himself, and removed his testicles himself. Some of the detainees also stated that the author had been acting strangely and aggressively in the days leading up to the accident. For example, Mr. M., who was summoned to make a statement regarding the day of the events, stated that on arriving at the place in which the author was being held, he saw him sitting on a pillow, in silence, seemingly withdrawn from reality, with blood on his body, that beside him, on the floor of the cell, there was a testicle, and that the author had simply said he had been bewitched.

2.18 On 6 and 20 November 2006, the judicial investigative police submitted two additional reports to the Office of the Attorney-General, which confirmed its initial recommendation. The reports included the statements of additional police officers, a firefighter who had come to the author's aid in prison and a person who had been held in the same unit as the author, which corresponded to the statements previously submitted to the Office of the Attorney-General.

2.19 On 30 January 2007, the Office of the Attorney-General of Chubut asked the Office of the Under-Secretary for Human Rights to provide a list of impartial and independent medical professionals who could conduct a physical and psychological examination of the author. On 7 February 2008, the Office of the Attorney-General arranged a medical examination with one of the psychiatrists suggested by the Office of the Under-Secretary, who was a member of the Argentine Psychosocial Work and Research Group, for 15 and 16 February 2008. However, the medical assessment could not be conducted due to a lack of administrative coordination and the opposition of the author's defence counsel. On 31 March 2008, the First Chamber dismissed the defence counsel's objection to the medical examination on the grounds that it had been ordered by the Office of the Attorney-General in the context of an investigation that was unconnected to the sentence enforcement proceedings being supervised by the Chamber.

2.20 At the request of the author's defence counsel, on 7 December 2007, a psychologist of their choosing issued a clinical psychological report on the author's mental state of health which concluded that the author was suffering from a "persistent post-traumatic personality disorder". The report also indicated that: "The possibility of the mutilation being self-inflicted by the patient, as the result of an act brought about by a psychotic state, should be categorically ruled out since the patient currently presents none of the indicative signs of such a pathology, which is incurable, and although this might suggest a case of schizophrenia in remission, there should have been disruptive episodes and non-symbolized events in his past". In addition, the report indicates that the author required psychological care and psychiatric medication, given the risk of depression-related suicide, as well as hormone treatment, under the supervision of an endocrinologist.

2.21 In the light of the medical report, in December 2007 the author asked the First Chamber either to release him or, alternatively, to place him under house arrest. On 26 December 2007, the First Chamber declared the author's request to be inadmissible. In addition, the Chamber asked the prison authorities to organize an urgent interdisciplinary assessment of the author's mental state of health and its development with a view to considering the possibility of his being moved up, on an exceptional basis, to the probationary stage of the four-stage prison programme leading to release. In February 2008, the author filed an appeal in cassation with the High Court of Chubut against the decision of the First Chamber.

2.22 The author alleges that on 7 August 2008, his sister was intercepted by unknown persons who forced her to enter a car, jabbed her in the left hand, and then threw her out onto the street. The author's mother filed a complaint about the incident with the Public Prosecution Service of Chubut province, but the complaint was dismissed. The author alleges that his sister was subjected to reprisals on account of the complaints he and his father were making in relation to his case.

2.23 On 27 April 2009, the First Chamber ordered that the author be moved onto the probationary stage of the four-stage prison programme, allowing him a monthly temporary release of 72 hours. The author was released on parole on 19 August 2009.

The complaint

3.1 The author alleges that he is the victim of violations by the State party of his rights under articles 1, 2, 10, 11, 12, 13, 14 and 16 of the Convention.[2]

3.2 The author maintains that while being held at Comodoro Rivadavia local police station No. 2 he was subjected to constant ill-treatment by the police on duty in the detention centre and that on 17 November 2003 he was subjected to acts of violence and torture, during which he suffered a bilateral testicular ablation and other injuries to the neck area. Although a complaint was lodged with the Public Prosecution Service in respect of these acts, there was no effective and impartial investigation. As a result, the complaint was arbitrarily dismissed and his aggressors were not punished.

3.3 The traumatic events to which he was subjected and their after-effects have seriously and irreparably affected his life and that of his close family members. He insists that the ill-treatment that was in violation of the Convention lasted for the entire duration of his detention. Despite the complaints of torture and ill-treatment and the repeated requests by the author's family, including an application for the case to be reopened submitted on 23 August 2006, the judicial authorities failed in their duty to investigate. Only the Office of the Attorney-General carried out general inquiries, which concluded with a refusal to reopen the case. However, no judicial authority has properly considered and examined the complaint. He also points out that the initial complaint was dismissed primarily on the basis of medical reports that suggested he had deliberately injured himself. However, at the request of his defence counsel, he underwent a new psychological exam, the results of which contradicted and discredited the reports on the state of his mental health that had been examined by the Public Prosecution Service when it ordered his case to be dismissed.

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[2] The Committee notes that in the complaint the author invokes these articles of the Convention without individually substantiating each of the alleged violations.

State party's observations on admissibility

4.1 On 2 February 2009, the State party submitted its observations on the admissibility of the complaint and requested that the Committee declare it inadmissible in accordance with article 22, paragraph 5 (a), of the Convention, since the author himself stated in his complaint that he had lodged a complaint with the Inter-American Commission on Human Rights.

4.2 Furthermore, the complaint does not comply with the provisions of rule 113 (f) of the Committee's rules of procedure (CAT/C/3/Rev.5) with respect to the prolonged period of time elapsed between the exhaustion of domestic remedies and the submission of the complaint to the Committee.[3] The complaint submitted to the competent authorities concerning the alleged acts of torture and ill-treatment in the police station was dismissed by the Chief Prosecutor of Comodoro Rivadavia in April 2004. Over the next five years, the author did not lodge any complaints with an international organization.

4.3 The State party maintains that, between 2006 and 2008, the author was visited by various authorities while he was serving his sentence in Prison Unit No. 6 in Rawson, including by the Office of the Under-Secretary for Prison Affairs and the Office of the Ombudsman for the Prison System. In addition, on 7 December 2007, a visit by a psychologist selected by the author's defence counsel was authorized in order to prepare a report on his mental health. This report recommended psychological care and psychiatric medication, which were duly provided. Furthermore, the State party asserts that the Office of the Under-Secretary for Human Rights provided assistance to the father and other family members to enable them to travel from Comodoro Rivadavia to visit the author.

Complainant's comments on the admissibility of the complaint

5.1 On 7 April 2009, the author submitted his comments on the admissibility of the complaint.

5.2 In relation to the requirement established in article 22, paragraph 5 (a), of the Convention, the author explains that the complaint submitted to the Inter-American Court of Human Rights was part of proceedings instituted by another person, Mr. I.E.T. In this connection, on 23 January 2009, the Executive Secretary of the Inter-American Court of Human Rights informed the author that in the case in hand only the facts related to Mr. I.E.T, his mother and his siblings were being considered. The Executive Secretary invited the author to submit an independent petition if he believed that his rights had been violated. The author alleges that he never submitted such a petition, and that therefore the case before the Committee has not been and is not being considered under any other international investigation or settlement procedure.

5.3 With regard to the time elapsed between the exhaustion of domestic remedies and the submission of the present complaint to the Committee, the author maintains that after his complaint of torture was shelved in 2004, he applied for various judicial remedies and submitted complaints to the competent authorities about the conditions of his detention and medical care, and about the constant transfers between different detention centres. He reiterates that, on 23 August 2006, he requested that his complaint of torture, which had not yet been resolved, be reopened by the Attorney-General of the Province of Chubut.

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[3] In the version of the rules in force at the time the State party submitted its observations (CAT/C/3/Rev.4), this provision corresponded to rule 107 (f).

5.4 Furthermore, he alleges that he is constantly punished by the prison authorities and that he has challenged every punishment. Nonetheless, all his challenges and subsequent appeals, cassation proceedings and extraordinary appeals have been rejected.

State party's observations on the merits

6.1 On 14 September 2010, the State party submitted its observations on the merits of the complaint and forwarded to the Committee a copy of the judicial proceedings before the First Chamber, the Public Prosecution Service of Comodoro Rivadavia and the Office of the Attorney-General of Chubut.

6.2 The State party notes that the case brought before the Public Prosecution Service of Comodoro Rivadavia in relation to the castration of the author in police station No. 2 was closed on 15 April 2004 because no evidence was found to indicate that an offence had been committed. Subsequently, in 2006, the author's family requested that the Office of the Attorney-General of Chubut reopen the case. In response to this request, the Office commissioned officials of the Public Prosecution Service and the Trelew city police to analyse the proceedings in relation to the complaint of castration submitted by the author's father. After studying the file and undertaking the necessary investigative measures, it was concluded that there were insufficient grounds for reopening the case.

6.3 Faced with persistent questioning about the author's state of health and the quality of the medical reports issued, on 7 February 2008, the Office of the Attorney-General scheduled a medical examination with one of the psychiatrists suggested by the Office of the Under-Secretary for Human Rights. However, the medical assessment could not be conducted due to a lack of administrative coordination and the opposition of the author's defence counsel.

6.4 On 5 May and 12 December 2006, representatives of the Office of the Under-Secretary for Prison Affairs, accompanied by the author's defence counsel, and representatives of the Office of the Ombudsman for the Prison System visited the author in Prison Unit No. 6. In addition, the Office of the Under-Secretary for Human Rights contacted the social assistant at the detention centre to enquire about the author's condition on several occasions.

Additional information submitted by the author

7.1 The author submitted additional information to the Committee on 4 January and 12 December 2011, 11 May 2012 and 29 April 2013.

7.2 The author relates, inter alia, that he underwent various medical examinations between 2009 and 2010 that confirmed that he had suffered the loss of his testicles, that he might undergo surgery for aesthetic purposes, and that he needed therapeutic support to help treat mental health problems. He attaches a new psychological report, prepared by the specialist selected by his defence counsel in December 2007, who concluded that, as had been the case in 2007, he did not find any symptomatic signs of hallucinatory schizophrenic behaviour which would suggest that it was an act of self-mutilation.

7.3 The author reiterates the allegations presented in his initial submission. He asserts that at least four medical and psychological reports — the report of the Penitentiary Psychiatric Unit of the Borda hospital dated 10 September 2004, the report of the psychologist selected by his defence counsel dated 8 December 2007, the report of two psychologists from the Committee for the Protection of Health, Ethics and Human Rights dated 30 December 2009 and the report of the Psychopathology Service of the National University of Córdoba dated 9 December 2010 — support the conclusion that he is suffering from a "lasting personality transformation following a very stressful experience of an extremely aggressive nature, with marked schizoid traits", which would appear to confirm that he was treated in a way that violated his rights under the Convention. He maintains that he was improperly administered medication to prevent him from testifying against police officers in the context of his complaint of torture and ill-treatment.

7.4 In addition, he alleges that he did not receive appropriate medical treatment once he had returned to the detention centre after being discharged; that his family was either prevented or impeded from visiting him both at the Regional Hospital and in the detention centre; that he was subjected to conditions of detention that were contrary to the Convention, prolonging the violation of his rights that had begun on 17 November 2003, given that he did not have a mattress or basic hygienic facilities, such as a nearby bathroom and hot water; and that he was kept in crowded premises.

7.5 The authorities of the detention centres in which he was detained continually subjected him to arbitrary punishments, including temporary isolation, without informing him of the reasons for the punishments. What is more, he did not have an opportunity to exercise his right to a defence against these punishments.

7.6 The author's close family members were also the victims of treatment that was contrary to the Convention since they received death threats and were subjected to humiliating body searches every time they came to visit him at the detention centre.

7.7 The author maintains that the State party must adopt comprehensive reparation measures in order to guarantee his right to health, including the necessary surgery and psychological treatment; properly and effectively investigate the events of November 2003 and punish those responsible; make a public statement condemning acts of torture committed by public servants in the exercise of their duties; and grant the author and his family compensation for material and moral damages amounting to US$ 2,500,000.00, plus costs and defence expenses.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claims contained in a complaint, the Committee must decide whether or not it is admissible under article 22 of the Convention.

8.2 The Committee takes note of the State party's observation that the complaint is inadmissible on the grounds that the author previously submitted a complaint to the Inter-American Commission of Human Rights. The Committee notes, however, that on 23 January 2009, the Executive Secretary of the Inter-American Commission of Human Rights informed the author that he could not submit a complaint in the context of a complaint submitted by other persons, and invited him to submit an independent petition if he believed that his rights had been violated. Subsequently, on 26 December 2009, the author submitted a complaint to the Inter-American Commission of Human Rights, which he withdrew on 10 May 2012, before the Commission had had the chance to transmit the complaint to the State party or to consider it. In the circumstances, the Committee considers that the complaint should not be considered as being or having been examined under any other procedure of international investigation or settlement, within the meaning of article 22, paragraph 5 (a), of the Convention. Consequently, the Committee finds that there is no obstacle to the admissibility of the complaint in accordance with article 22, paragraph 5 (a), of the Convention.

8.3 In relation to the requirement set out in article 22, paragraph 5 (b), of the Convention, the Committee takes note of the complaint of torture lodged by the author's father, which was dismissed by the Public Prosecution Service on 15 April 2004; the application to reopen the case submitted by the author's father and sister; the decision of the representatives of the Public Prosecution Service on 9 October 2006, concluding that there were insufficient grounds to order the reopening of the case; as well as various procedures undertaken by the author's family before the judicial authorities to convince them to consider the author's complaint of torture. Given the circumstances and the absence of observations from the State party querying the lack of exhaustion of domestic remedies, the Committee finds that there is no obstacle to the admissibility of the complaint in accordance with article 22, paragraph 5 (b), of the Convention.

8.4 The Committee takes note of the State party's observation that the complaint should be declared inadmissible in accordance with rule 113 (f) of the Committee's rules of procedure on the grounds that the time elapsed since exhaustion of domestic remedies was excessively prolonged. The Committee considers that the period between 9 October 2006, when the request to reopen the case was denied, and the submission of the present complaint on 18 November 2008 was not so unreasonably prolonged as to render consideration of the claims unduly difficult for the Committee or the State party. Consequently, the Committee finds that there are no obstacles to admissibility under rule 113 (f) of the Committee's rules of procedure.

8.5 The Committee takes note of the author's allegations that while he was detained in Comodoro Rivadavia police station No. 2 he was subjected to ill-treatment and torture and that the State party failed to conduct a proper and effective investigation leading to the punishment of the perpetrators. The Committee considers that the author's complaint is sufficiently substantiated for the purposes of admissibility. Consequently, the Committee finds the communication admissible and proceeds to its consideration of the merits.

Consideration of the merits

9.1 The Committee has considered the communication in the light of all the information submitted by the parties, in accordance with article 22, paragraph 4, of the Convention.

9.2 The Committee takes note of the author's allegations that he was subjected to torture and ill-treatment by the police at the Comodoro Rivadavia police station and that on 17 November 2003 he was the victim of a bilateral testicular ablation and other injuries to the neck area; that the complaint submitted to the Public Prosecution Service on 19 November 2003 was arbitrarily dismissed, primarily on the basis of incorrect medical reports, as shown by the clinical psychology report of 7 December 2007 prepared at the request of his defence counsel; that his request to have the case reopened was considered superficially by representatives of the Public Prosecution Service; and that his complaint was never considered by a judge despite the seriousness of his injuries. In these circumstances, he alleges that the State party's judicial authorities did not take measures to conduct a proper and effective investigation and punish those responsible. On the contrary, they obstructed his defence by improperly administering medication to him so that he could not testify against the police officers responsible. As a result, his complaint was arbitrarily dismissed and his aggressors were not punished.

9.3 The Committee notes that, when considering the author's complaint of alleged torture, between 19 November 2003 and 15 April 2004, the Office of Prosecutor No. 2 of Comodoro Rivadavia requested information about the state of the author's physical and mental health from both the prison authorities and the Regional Hospital; that it took statements from the police officers who had been on duty on 17 November 2003, and from third persons unrelated to the complaint, including the doctors and the member of the fire brigade who had come to the author's assistance, and other detainees who had been in the same unit as the author. Subsequently, between 23 August 2006 and 20 November 2006, an official from the Prosecutor's Office and a police officer attached to the Public Prosecution Service re-examined the information contained in the file and interviewed some of the persons and authorities involved or present when the facts of the complaint took place, who confirmed the statements or opinions initially given to the Office of the Prosecutor.

9.4 Based on a reading of the dismissal decision of the Office of Prosecutor No. 2 of Comodoro Rivadavia dated 15 April 2004 and the report of the representatives of the Public Prosecution Service on the request to reopen the case dated 9 October 2006, in addition to the reports of the judicial investigation police dated 6 and 20 November 2006, the Committee understands that the decision to dismiss the author's complaint was not based solely on the medical reports on the author's state of health, but also on evidence, reports and statements obtained from various sources, including persons, such as the firefighter who came to the author's assistance and other detainees who were in the same unit, who had no apparent conflict of interest, which concurred. Furthermore, the Committee considers that, given the contradictions between the medical and psychological reports on the state of the author's mental health, these reports do not constitute fully convincing evidence that could help clarify the question of who was responsible for the facts of the complaint. In these circumstances, the Committee considers that it is not able to conclude, based on the information contained in the file, that the investigation into the facts that took place on 17 November 2003 lacked the impartiality required under articles 12 and 13 of the Convention. Consequently, the Committee finds that it is not possible to conclude from the information in the file that the author was the victim of treatment that was in violation of the obligations contained in the Convention in relation to those facts.

10. The Committee against Torture, acting under article 22, paragraph 7, of the Convention, finds that the facts before it do not indicate a violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Communication No. 372/2009: *Barry v. Morocco*

Submitted by:	Diory Barry (or Diodory Barry), represented by Alberto J. Revuelta Lucerga, lawyer
On behalf of:	Diory Barry (or Diodory Barry)
State party:	Morocco
Date of complaint:	1 November 2008 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 19 May 2014,

Having concluded its consideration of complaint No. 372/2009, submitted on behalf of Diory Barry under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

1. The complainant is Diory Barry, a Senegalese national born on 1 January 1976. He claims to have been a victim of a violation of article 16 of the Convention during his expulsion to Mauritania by the Moroccan authorities. The complainant is represented by counsel, Alberto J. Revuelta Lucerga, lawyer.

The facts as submitted by the complainant

2.1 In early August 2008 the complainant, who had been expelled from Spain to his country of origin in October 2007 after having entered the country illegally, set off by pirogue from Nouadhibou, Mauritania, to the Canary Islands, Spain, with a group of undocumented migrants. The pirogue was adrift for approximately 13 days, during which time some 30 persons died, their remains being thrown into the sea. The boat was finally intercepted by the Moroccan authorities, who placed the complainant and the approximately 40 survivors in a detention camp in Dakhla, Morocco, where they remained for roughly 10 days.

2.2 On 5 or 6 September 2008,[1] the Moroccan gendarmerie took the complainant and the rest of the group by military truck to the border area in the desert separating Morocco and Mauritania. The complainant and the rest of the group were then told by the gendarmes that they must walk across the desert in the direction of the Mauritanian town of Nouadhibou. The distance between the place where they were abandoned and the first inhabited area on the Mauritanian side was approximately 50 kilometres and included a large minefield. The equipment provided to each person by the Moroccan gendarmerie was limited to a pair of plastic flip-flops, a bottle of water and a few sandwiches. The complainant and the rest of the group did not have any way of protecting themselves, nor did they receive any warm clothing, blankets or additional food.

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[1] The complainant was unable to specify the exact date.

2.3 On 7 September 2008, the complainant and other members of the group were found in the no-man's-land in the desert between Morocco and Mauritania, some of them suffering from serious wounds resulting mainly from the time spent adrift at sea (sunburn, wounds caused by salt and other open wounds). One member of the group had been killed the previous day after stepping on an anti-personnel mine. Some members of the group were detained by the Mauritanian authorities.

The complaint

3.1 The complainant alleges that the Moroccan Government expelled him in a flagrantly illegal manner by taking him to the desert border area with Mauritania without having brought him before a court, depriving him of access to all domestic remedies to appeal his expulsion. According to the complainant, the State party holds no official record of his detention or expulsion.

3.2 The complainant asserts that his abandonment in the desert without suitable equipment by the Moroccan gendarmes was an intentional act by the State party authorities, because the gendarmes were acting with the support of their superiors and the competent political authorities. The complainant considers that these acts subjected him to pain and physical and mental suffering, constituting at the very least cruel, inhuman and degrading treatment as defined in article 16 of the Convention.

3.3 The complainant notes that all persons have the right to leave any country, including their own, in accordance with the Universal Declaration of Human Rights, and that simply exercising this basic right should not give rise to inhuman and degrading treatment such as that to which he was subjected. The complainant stresses that Morocco has not signed a readmission agreement with Senegal and, as a result, the Moroccan authorities decided simply to return him to Mauritania without informing the Mauritanian authorities.

State party's observations on admissibility and the merits

4.1 The State party observes that the complainant had been expelled from Spain in October 2007 but had nevertheless decided to return there illegally on board a makeshift vessel with a group of undocumented migrants who did not have travel documents or entry visas for Morocco. The State party confirms that on 3 September 2008,[2] the Moroccan Royal Navy intercepted a vessel that was in distress as a result of engine failure, en route to the Canary Islands with some 78 African citizens of various nationalities on board as well as 2 unidentified bodies.

4.2 Upon arrival at the Moroccan port of Dakhla, the surviving undocumented migrants underwent a medical examination; 10 of them were subsequently hospitalized because of their deteriorating health. The two bodies were transported to the morgue so that a sample of their DNA could be taken and their identity ascertained. The rest of the group was transported to the centre for undocumented migrants after their statements had been taken. The *wilaya* (governorate) of the Oued Ed-Dahab-Lagouira region then ensured that all persons detained at the centre received daily meals, clothes and blankets as well as medical follow-up.

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[2] This date does not seem to correspond to the date on which the complainant states the boat he was on was intercepted.

4.3 The State party notes that on 8 September 2008,[3] the *Wali* (governor) decided to expel these undocumented migrants via the Morocco-Mauritania border crossing, and that the decision was carried out on 10 September 2008, in accordance with the legislation in force. In this connection, the State party notes that the provisions of its national legislation concerning the entry and stay of aliens in Morocco and irregular migration guarantees the right of aliens to access to a lawyer, an interpreter and a doctor, to communicate with their consulate or a person of their choice and to appeal a decision to escort them to the border within 48 hours of being notified of the decision. The State party concludes by stating that neither the complainant nor any other member of the group followed the judicial appeal procedures mentioned above during their detention at the centre.[4]

Complainant's comments on the State party's observations

5. The complainant observes that the State party confirms the reported facts and that he was therefore unable at the time of his expulsion to make use of the legal remedies indicated by the State party.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 Regarding the exhaustion of domestic remedies, the Committee takes note of the information submitted by the State party on remedies provided for in its legislation allowing individuals to contest decisions to escort them to the border within 48 hours of being notified of the decision. The Committee observes, however, that the State party does not indicate that it had effectively informed the complainant of the remedies available to appeal the expulsion decision. Nevertheless, the Committee points out that, in the present case, the complainant's claim does not focus on the expulsion decision but on the cruel, inhuman and degrading treatment inflicted by the State party authorities during his expulsion to Mauritania. The Committee also notes that the State party does not provide information on the relevant, suitable and effective remedies available in practice. In particular, no information is provided by the State party on the remedies accessible to the complainant to obtain reparations for the alleged violation following his expulsion, when he was no longer in the territory of the State party and could not reasonably return there without the risk of similar treatment. The Committee therefore believes that, in practice, no domestic remedy was accessible to the complainant, who was in an extremely vulnerable position and was unable to lodge this complaint with the Moroccan courts after being expelled from the country. It is the view of the Committee that, given the circumstances of the case, the requirement for the exhaustion of domestic remedies provided for in article 22, paragraph 5 (b), of the Convention does not preclude the Committee from finding the petition admissible.[5]

6.3 The Committee, finding no other reason to consider the communication inadmissible, thus proceeds to its consideration on the merits of the claims submitted by the complainant under article 16 of the Convention.

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[3] The dates provided by the State party concerning the expulsion decision and its execution do not seem to correspond to those provided by the complainant.

[4] The State party does not indicate that the complainant was informed of the remedies available.

[5] See communication No. 194/2001, *I.S.D. v. France*, decision adopted on 3 May 2005, para. 6.1.

Consideration of the merits

7.1 The Committee has considered the complaint in the light of all the information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention. The State party has partially confirmed the facts as submitted by the complainant, although confusion regarding dates and the number of migrants on board the intercepted boat means that it cannot be proven beyond doubt that the State party and the complainant are referring to the same boat and group of migrants. Given that the State party has not provided any observations on the treatment of the complainant while the decision to expel him to Mauritania was being implemented, due weight must be given to the complainant's allegations. The Committee also refers to its concluding observations,[6] adopted following consideration of the fourth periodic report submitted by the State party, in which it expressed its concern regarding information received that, in practice, "undocumented migrants [had] been escorted to the border or otherwise expelled in violation of Moroccan law without having been given the opportunity to exercise their rights. Several allegations have been made that hundreds of migrants have been abandoned in the desert without food or water." The facts reported by the complainant are therefore not isolated.

7.2 The Committee notes that, according to the complainant, Moroccan gendarmes abandoned him and approximately 40 other undocumented migrants, some of whom were severely injured, in the border area separating Morocco and Mauritania without adequate equipment and with minimal supplies of food and water, and forced them to walk some 50 kilometres through an area containing anti-personnel mines in order to reach the first inhabited areas on the Mauritanian side. The Committee considers that the circumstances of the complainant's expulsion by the State party constitute the infliction of severe physical and mental suffering on the complainant by public officials. They can therefore be considered cruel, inhuman or degrading treatment as defined in article 16 of the Convention.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the facts before it constitute a violation of article 16 of the Convention.

9. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee urges the State party to launch an impartial inquiry into the events in question for the purpose of prosecuting those persons responsible for the treatment inflicted on the complainant, and to take measures to provide the complainant with redress, including fair and adequate compensation. The State party is also under an obligation to take steps to prevent similar violations occurring in the future. The Committee asks the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in accordance with the above observations.

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[6] CAT/C/MAR/CO/4, para. 26.

Communication No. 376/2009: *Bendib v. Algeria*

Submitted by:	Djamila Bendib, represented by Alkarama for Human Rights
Alleged victim:	Mounir Hammouche (the complainant's son)
State party:	Algeria
Date of complaint:	12 January 2009 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 8 November 2013,

Having concluded its consideration of communication No. 376/2009, submitted on behalf of Mounir Hammouche under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, her counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1. The complainant is Djamila Bendib. She submits the complaint on behalf of her son, Mounir Hammouche, born on 15 December 1980 in Aïn Taghrout, *wilaya* of Bordj Bou-Arréridj, where he resided during his lifetime and where he died in 2006. The complainant alleges that Mounir Hammouche was the victim of a violation of articles 2 (para. 1), 11, 12, 13 and 14, read in conjunction with articles 1 and 16, of the Convention. The complainant is represented by counsel.

The facts as submitted by the complainant

2.1 On 20 December 2006, as he was accustomed to doing, Mounir Hammouche attended evening prayers at one of the mosques in the village of Aïn Taghrout, where he lived. At around 8 p.m., when he was returning home at the end of prayers, several armed men driving a vehicle and dressed in civilian clothing arrested him near the mosque. He was taken to a military barracks of the Intelligence and Security Department (DRS) (the army's intelligence service in charge of counter-terrorism operations). Given that the DRS agents had placed a hood over his head, Mounir Hammouche could not clearly make out where he had been taken. He was released the following day. The complainant does not know whether Mounir Hammouche was subjected to ill-treatment during his first arrest. The victim told his family only that DRS agents had reproached him, without elaborating any further, for not attending prayers at a mosque closer to his home and for having a beard and wearing Islamic dress.

2.2 On 23 December 2006, upon leaving the same mosque, Mounir Hammouche was arrested a second time, along with six other persons,[1] by the same DRS officials driving the same vehicle. According to later accounts provided by the persons arrested with Mounir

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[1] The complainant names these persons.

Hammouche, everyone, including Mr. Hammouche, was taken to the DRS military barracks, the Territorial Centre for Research and Investigation in Constantine, where they were tortured during the period between 23 December 2006 and 3 January 2007.

2.3 On 29 December 2006, individuals dressed in civilian clothing and accompanied by police officers visited the home of Mounir Hammouche to inform his family that he had died while in police custody. These persons, probably DRS agents, did not reveal their identity or rank, but merely indicated that they were from the security services (Al-Amn). Several hours later, the body of Mounir Hammouche was returned to his family, who were able to detect numerous signs of torture all over his body, in particular a head injury and bruises on his hands and feet. In response to a question by one of Mounir Hammouche's brothers about the circumstances of his brother's death, one of the agents, who appeared to be in charge, said that Mounir Hammouche "had probably committed suicide", that "in any case, an autopsy had been carried out" and that "they [the family] could bury him". The DRS agents and police officers stayed close to the family's home until Mounir Hammouche's burial on 30 December 2006. They appeared to be monitoring the family's reaction, as well as the comings and goings of neighbours and persons close to the family. Numerous DRS agents and police officers also kept watch over the funeral proceedings.

2.4 Convinced that Mounir Hammouche had not committed suicide but had died as a result of torture during his detention in DRS facilities, his family took numerous steps to shed light on the circumstances of his death. They first sought to discover what had happened to the other persons taken into custody on the same day as Mounir Hammouche with a view to obtaining their account of the events. On 3 January 2007, the individuals in question had been taken to the Court of Ras El Oued and brought before the public prosecutor. All had been charged with "advocacy of terrorism" and placed in pretrial detention in Bordj Bou-Arréridj prison. A number of these individuals told the complainant that Mounir Hammouche, like his fellow prisoners, had been brutally tortured by DRS agents in the Territorial Centre for Research and Investigation in Constantine, where they had all been taken following their arrest. These accounts of torture were confirmed by one of the defendants' lawyers, who noted that, on 3 January 2007, the day of the court hearing before the investigating judge, his clients still bore visible signs of torture.

2.5 With the intention of lodging a complaint, Yazid Hammouche, the victim's brother, went to the Court of Ras El Oued, which had territorial jurisdiction in the matter, in order to request that the public prosecutor provide him with a copy of the report of the autopsy which, according to the Intelligence and Security Department, had been performed on Mounir Hammouche's corpse. However, the prosecutor refused this request and referred Yazid Hammouche to the chief prosecutor of Constantine. Yazid Hammouche was then received by the chief prosecutor of Constantine, who confirmed that Mounir Hammouche was believed to have committed suicide and that an autopsy had been carried out and a report prepared. The chief prosecutor of Constantine subsequently produced an unsigned and undated document, which he said was the autopsy report. He refused, however, to let Yazid Hammouche have a copy and denied the latter's request to consult the document at greater length. Yazid Hammouche informed him of his family's wish to lodge a complaint, but the official refused to discuss the matter, adding that, in any event, an investigation was under way and that its results would be made known to the family in due course.

2.6 Given the lack of response to the family's requests, the complainant wrote to the public prosecutor of Ras El Oued on 7 February 2007, asking for a copy of Mounir Hammouche's autopsy report. The complainant also wrote to the chief prosecutor of Constantine. She received no reply from either of the two officials. All of the steps taken by the victim's family have been to no avail, and domestic remedies have proved to be inaccessible and ineffective, owing to the inaction of the prosecution service and the authorities. According to the complainant, the authorities of the State party, including its judicial authorities, clearly refuse to hold the security services responsible, despite the latter's direct implication in the death of Mounir Hammouche. The State party's claim that an investigation was under way, which was the pretext given for refusing to register a criminal complaint, appears to have been made for no other reason than to deny the family its right to know the truth, to lodge a criminal complaint and to obtain redress. Furthermore, neither of the two officials approached by Mounir Hammouche's family informed them of the results of the purported investigation. It is therefore reasonable to assume that no serious investigation has ever been carried out, since the authorities know that Mounir Hammouche most likely died as a result of the torture to which he and the other persons arrested at the same time had been subjected.

2.7 On 16 January 2007, the complainant reported Mounir Hammouche's death in police custody to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. On 18 January 2007, she also reported it to the Special Rapporteur on extrajudicial, summary or arbitrary executions.[2] In addition, the complainant refers to the concluding observations of the Committee against Torture concerning the State party's third periodic report, in which the Committee expressed its concern at the fact that Mounir Hammouche's family had not been granted access to the autopsy report.[3] In the course of the Committee's dialogue with the State party during the consideration of the latter's periodic report in May 2008, Mounir Hammouche's family finally learned the name of the doctor who had reportedly performed the autopsy. On that same occasion, the representative of the Government of the State party also stated that the family could request the autopsy report and records of the preliminary investigation. Armed with this information, in the summer of 2008, Yazid Hammouche once again approached the prosecutor of the Court of Ras El Oued and the chief prosecutor of the Court of Constantine in order to repeat the family's requests. However, despite the State party's official statements, the family has never succeeded in obtaining a copy of the autopsy report. According to the complainant, it seems reasonable to suspect that the autopsy report indicates torture as the cause of death.

2.8 The complainant also stresses that the main witnesses to the incident, namely the other persons arrested and imprisoned under the same circumstances as the victim, have never been asked by investigators about the facts of the case or the conditions of their detention. In addition, the individuals concerned have never had the opportunity to testify as civil claimants, as is standard practice in criminal investigations. Thus, the family never had the legal possibility to file a complaint since, according to the judicial authorities, and as confirmed before the Committee in May 2008, an investigation was already under way. According to the complainant, this is a pretext that seems to have been provided solely as a means of denying the victim's family the right to know the truth, to lodge a criminal complaint with the public prosecutor's office and to obtain redress. As a result, despite all the efforts made by the family, none of the perpetrators of the offences committed against Mounir Hammouche, although they are easily identifiable, has ever been questioned. The complainant reiterates that her family has attempted to use existing legal channels, but that all their efforts have proved to be ineffective,[4] and that, to this day, the family of Mounir Hammouche continues to be denied its right to justice. The complainant therefore requests to be relieved of the obligation to continue pursuing domestic remedies in order for her complaint to be admissible before the Committee.

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[2] The Special Rapporteur on extrajudicial, summary or arbitrary executions, jointly with the Special Rapporteur on torture, sent an allegation letter regarding the case of Mounir Hammouche to the State party on 20 February 2007. On 26 June 2007, the Government of the State party confirmed the facts and stated that the autopsy carried out by the head of forensic medicine at the University Hospital of Constantine had shown that the death of Mounir Hammouche was the result of mechanical asphyxiation by hanging and that this hanging was considered, prima facie, to be a suicide. On 3 August 2007, the Special Rapporteur on extrajudicial, summary or arbitrary executions sent a follow-up letter to the Government of the State party, jointly with the Special Rapporteur on torture, asking the State party to provide them with a copy of Mounir Hammouche's autopsy report. No response was received from the State party to this request. (Summary of cases transmitted to Government and replies received, Addendum to the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, A/HRC/8/3/Add.1, pp. 21–24.)

[3] CAT/C/DZA/CO/3, para. 14.

The complaint

3.1 The complainant alleges that her son, Mounir Hammouche, is a victim of violations by the State party of articles 2 (para. 1), 11, 12, 13 and 14, read in conjunction with article 1, and alternatively, article 16, of the Convention.

3.2 According to the complainant, there is no doubt that Mounir Hammouche was subjected to torture. His fellow prisoners, who were arrested under the same circumstances and detained in the same place, namely the Territorial Centre for Research and Information in Constantine, and under the same conditions, all reported being tortured by DRS agents from the Centre. The complainant maintains that thousands of people have been held at this centre and have subsequently disappeared; many died as a result of torture, while others were summarily executed in the 1990s. According to the consistent accounts of Mounir Hammouche's close friends and relatives, his corpse, which was returned to his family with an official order for immediate burial, bore signs of torture, including a head injury and bruises on his hands and feet. This physical abuse was directly responsible for his death, with the fact that he died constituting unmistakable proof of its violence and intensity. The complainant adds that Mounir Hammouche's torturers intended to cause him intense suffering, since it would be impossible to subject a person to such violence unintentionally. The purpose of the torture was to obtain information or a confession from him, to punish or intimidate him, or to coerce him on the grounds of his purported Islamist affiliation. At the time of his first arrest, he had, in fact, been reproached for having a beard and wearing Islamic dress. Furthermore, there is no doubt that the offences perpetrated against Mounir Hammouche were committed by members of the Intelligence and Security Department, who were agents of the State acting in an official capacity. The complainant concludes that the physical abuses inflicted on the victim constitute acts of torture as defined in article 1 of the Convention.

3.3 The complainant also invokes article 2, paragraph 1, of the Convention, pursuant to which the State party should have taken all "effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction". She adds that Algerian legislation contains no provision prohibiting the use of confessions or statements extracted under torture as evidence. This does nothing to discourage the investigative police — not to mention the Intelligence and Security Department, which is not accountable to the judicial branch — from using illegal methods to obtain statements for later use in criminal trials against detained persons or third parties. Furthermore, the State party operates a number of secret detention centres,[5] which opens the door to all kinds of abuse[6] and runs contrary to the measures identified by the Committee as those required of States parties in order to prevent the torture and ill-treatment of persons deprived of their liberty, such as maintaining an official register of prisoners.[7] Pursuant to article 2, paragraph 1, of the Convention, the State party must also respect the right of persons deprived of their liberty to promptly receive independent legal and medical assistance, to contact relatives, to have access to legal and other remedies that ensure the prompt examination of their complaint, to defend their rights and to contest the legality of their detention or treatment.[8] The complainant points out that Algerian legislation provides for a period of police custody of up to 12 days, but makes no provision for contact with the outside world, including with relatives, a lawyer or an independent doctor. This long period of incommunicado detention exposes persons held in custody to an increased risk of torture and ill-treatment. Moreover, in such circumstances, they are physically unable to assert their rights through judicial proceedings.

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[4] The complainant refers, inter alia, to communications No. 238/2003, *Z.T. v. Norway*, decision adopted on 14 November 2005 and No. 195/2002, *Mafhoud Brada v. France*, decision adopted on 17 May 2005.

[5] Houch Chnou, Oued Namous, Reggane, El Harrach and Ouargla, and all military units reporting directly to the Intelligence and Security Department (DRS).

[6] The complainant refers to the concluding observations of the Human Rights Committee concerning the consideration of the third periodic report of Algeria, CCPR/C/DZA/CO/3, para. 11.

3.4 The complainant also invokes article 11 of the Convention, noting that article 51 of the State party's Code of Criminal Procedure[9] provides for a period of police custody of up to 12 days, which, in practice, is often exceeded.[10] The right to be assisted by a lawyer while in police custody is not guaranteed in Algerian legislation. Moreover, there is no legal provision that prohibits the use of a statement obtained under torture as evidence.

3.5 The complainant also maintains that, in the case of Mounir Hammouche, the State party has violated article 12 of the Convention, which requires States parties to proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed.[11] None of the requests made by the victim's family, in which the facts are brought to the attention of prosecutors, has led to an investigation, whereas such an investigation should have been conducted without delay.[12] Although an autopsy was supposedly ordered following the death of Mounir Hammouche, no report has been transmitted to his family, which raises doubts about the veracity of the State party's claims. Similarly, an investigation was supposedly undertaken, but the results have never been made known to the family, despite the fact that more than two years have passed since the events took place.[13] Assuming that such an investigation was indeed carried out, the complainant questions its impartiality, given that those who would have headed it are themselves perpetrators of, or, at the very least, accomplices to the acts in question. In the end, the complainant doubts whether any investigation was ever conducted at all, since none of the material witnesses has ever testified in any proceeding. The complainant therefore concludes that, given its failure to conduct a genuine, prompt and impartial investigation into the allegations of torture suffered by Mounir Hammouche, the State party has acted in violation of its obligations under article 12 of the Convention.

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[7] The complainant refers to general comment No. 2 (2008) of the Committee against Torture, *Official Records of the General Assembly, Sixty-third Session, Supplement No. 44* (A/63/44), annex VI, para. 13.

[8] Ibid., para. 13.

[9] Order No. 66-155 of 8 June 1966 on the Code of Criminal Procedure, as amended and supplemented by Act No. 06-22 of 20 December 2006.

[10] The complainant refers to the concluding observations of the Human Rights Committee, op. cit., para. 18.

[11] The complainant refers to communications No. 187/2001, *Thabti v. Tunisia*, decision adopted on 14 November 2003, para. 10.4; No. 60/1996, *M'Barek v. Tunisia*, decision adopted on 10 November 1999, para. 11.7; and No. 59/1996, *Blanco Abad v. Spain*, decision adopted on 14 May 1998, para. 8.2.

[12] The complainant refers to communications No. 8/1991, *Qani Halimi-Nedzibi v. Austria*, decision adopted on 18 November 1993, para. 13.5; *M'Barek v. Tunisia*, para. 11.7; and *Blanco Abad v. Spain*, para. 8.2.

[13] Today, more than seven years.

3.6 With regard to article 13 of the Convention, the complainant argues that the State party should have guaranteed the family of Mounir Hammouche the right to lodge a complaint and to have its case heard promptly and impartially by the appropriate national authorities. As matters stand, the authorities have removed any hope that the victim's family had of obtaining justice. The prosecutor of Ras El Oued has not taken any action in response to the complaint lodged by the victim's brother, and the prosecutor of Constantine, also seized of the case, has not shown any diligence in the matter either. In addition, Mounir Hammouche's family has been denied a copy of the report of the autopsy that was purportedly conducted – obviously a key piece of evidence in elucidating and proving the facts. Furthermore, they have not had access to the results of the investigation that the State claims to have carried out, however partial or incomplete that investigation might be. By failing to inform the family of the results of the investigation, the State party has blocked any criminal action that the family could, in theory, have brought under the Algerian Code of Criminal Procedure. In so doing, the State party has acted in violation of article 13 of the Convention.[14]

3.7 The complainant also invokes article 14 of the Convention, noting that, by depriving Mounir Hammouche's family of the opportunity to bring legal action under criminal law, the State party has deprived it of a legal means of obtaining compensation for serious crimes such as torture. In addition, the inaction of the prosecution service has nullified the family's chances of obtaining redress through a civil action for damages, which are brought separately from criminal proceedings, given the stipulation in the Algerian Code of Criminal Procedure that "a judgement in a civil action shall be deferred until the final determination of a criminal action".[15] A public prosecutor who refuses to conduct an investigation therefore precludes effective access to civil proceedings. The complainant emphasizes, furthermore, that the State party's obligation to provide redress includes, but is not limited to, compensation for damages suffered, since it must also include the adoption of measures aimed at non-repetition of the offences, in particular by imposing penalties on the guilty parties that are commensurate with the seriousness of their acts. This implies, first and foremost, conducting an investigation and prosecuting those responsible.[16] In the case of Mounir Hammouche, the crime perpetrated against him remains unpunished, since his torturers have not been convicted, prosecuted, subject to investigation or even questioned, which amounts to a violation of the right of Mounir Hammouche's family to redress under article 14 of the Convention.

3.8 The complainant repeats that, in accordance with the definition set out in article 1 of the Convention, the violent acts inflicted on Mounir Hammouche amount to torture. However, should the Committee fail to endorse such a characterization, the fact remains that the physical abuse endured by the victim constitutes, in any case, cruel, inhuman or degrading treatment and that the State party therefore also has an obligation to prevent such acts and to punish the perpetrators when those acts are committed by or at the instigation of or with the acquiescence of a public official, pursuant to article 16 of the Convention.

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[14] The complainant refers to communications No. 171/2000, *Dimitrov v. Serbia and Montenegro*, decision adopted on 3 May 2005, para. 7.2 and No. 172/2000, *Dimitrijevic v. Serbia and Montenegro*, decision adopted on 16 November 2005, para. 7.3.

[15] Order No. 66-155 of 8 June 1966 on the Code of Criminal Procedure, art. 4.

[16] The complainant refers in particular to communication No. 212/2002, *Urra Guridi v. Spain*, decision adopted on 17 May 2005, para. 6.8. This decision is, moreover, in line with the jurisprudence of the Human Rights Committee (communications No. 563/1993, *Andreu v. Colombia*, Views adopted on 27 October 1995, para. 8.2 and No. 778/1997, *Coronel et al. v. Colombia*, Views adopted on 24 October 2002, para. 6.2); and that of the European Court of Human Rights (*Assenov and others v. Bulgaria*, No. 90/1997/874/1086, 28 October 1998, paras. 102 and 117 and *Aksoy v. Turkey*, No. 100/1995/606/694, 18 December 1996, para. 90).

State party's failure to cooperate

4. On 27 January 2011, 27 February 2012 and 21 May 2012, the State party was invited to submit its comments on the admissibility and merits of the communication. The Committee notes that no information has been received in this connection. It regrets the State party's refusal to communicate any information on the admissibility and/or merits of the complainant's claims. The Committee recalls that the State party is obliged, pursuant to the Convention, to submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that the State may have taken. In the absence of a response from the State party, due weight must be given to the complainant's allegations, which have been properly substantiated.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 As required under article 22, paragraph 5 (a), of the Convention, the Committee has ascertained that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement. The Committee notes that the case of Mounir Hammouche was brought to the attention of the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture in 2007. However, the Committee notes that extra-conventional procedures or mechanisms established by the Commission on Human Rights or the Human Rights Council, whose mandates are to examine and report publicly on human rights situations in specific countries or territories or on cases of widespread human rights violations worldwide, do not constitute procedures of international investigation or settlement within the meaning of article 22, paragraph 5 (a), of the Convention.[17] Accordingly, the Committee considers that the examination of Mounir Hammouche's case by the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture does not render the communication inadmissible under this provision.

5.2 Regarding the exhaustion of domestic remedies, the Committee recalls with concern that, despite the three reminders sent to it, the State party has not provided any observations on the admissibility or merits of the communication. The Committee therefore finds that it is not precluded from considering the communication under article 22, paragraph 5 (b), of the Convention.

5.3 The Committee finds no other reason to consider the communication inadmissible and thus proceeds to its consideration of the merits of the claims submitted by the complainant under articles 1, 2 (para. 1), 11, 12, 13, 14 and 16 of the Convention.

Consideration of the merits

6.1 The Committee has considered the complaint in the light of all the information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention. As the State party has not provided any observation on the merits, due weight must be given to the complainant's allegations.

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[17] See the jurisprudence of the Human Rights Committee concerning its interpretation of article 5, paragraph 2 (a), of the Optional Protocol to the International Covenant on Civil and Political Rights, for example, communications No. 1781/2008, *Berzig v. Algeria*, Views adopted on 31 October 2011, para. 7.2 and No. 540/1993, *Laureano Atachahua v. Peru*, Views adopted on 25 March 1996, para. 7.1.

6.2 The Committee notes that, according to the complainant, on 23 December 2006, three days after his initial arrest, Mounir Hammouche was arrested by DRS agents and driven to the Territorial Centre for Research and Investigation in Constantine – an army barracks where, according to the testimony of his fellow prisoners, he was tortured. On 29 December 2006, agents of the State party visited Mounir Hammouche's home in order to announce to his family that he had died in police custody. Several hours later, the victim's body was returned to his family, who were able to detect an injury to his head and bruises on his hands and feet. According to the complainant, these injuries suggest that grievous bodily harm, which must be considered to have caused severe pain and suffering, was intentionally inflicted upon Mounir Hammouche during his detention by officials of the State party with a view to obtaining a confession, or to punishing or intimidating him because of his purported adherence to Islamist ideology. In the absence of any substantive refutation by the State party, the Committee concludes that due weight must be given to the author's allegations and that the facts, as submitted by the complainant, constitute acts of torture, within the meaning of article 1 of the Convention.

6.3 In the light of the above finding of a violation of article 1, the Committee will not consider separately the claims based on the violation of article 16 of the Convention, invoked in the alternative by the complainant.

6.4 The complainant also invokes article 2, paragraph 1, of the Convention, according to which the State party should have taken all "effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction". She adds that Algerian law contains no provision that prohibits the use of confessions or statements extracted under torture as evidence; that Algerian legislation provides for a period of police custody of up to 12 days, while not allowing any possibility for the prisoner to contact a family member, lawyer or independent doctor; and that this long period of incommunicado detention heightens the risk of torture and ill-treatment. The Committee recalls its concluding observations, adopted in May 2008 following its consideration of the State party's third periodic report, in which it expressed its concern at the length of the period of police custody allowable by law, which, in practice, can be extended several times; at the fact that the law does not guarantee the right to consult a lawyer during the period of police custody; and at the fact that the rights of persons held in custody to have access to a doctor and to communicate with their family are not always respected in practice.[18] These observations echo the Committee's general comment No. 2 (2008), in which it draws attention to the content of States parties' obligation under article 2, paragraph 1, to take effective measures to prevent torture, particularly through the application of certain fundamental guarantees applicable to all persons deprived of their liberty.[19] In the present case, Mounir Hammouche was placed in incommunicado detention and was not given the possibility of contacting his family, a defence lawyer or a doctor. The apparent lack of any mechanism to provide oversight of the Territorial Centre for Research and Investigation exposed him to an increased risk of being subjected to acts of torture and, furthermore, deprived him of any possible remedy. The Committee consequently finds a violation of article 2, paragraph 1, read in conjunction with article 1, of the Convention.

6.5 With regard to article 11, the Committee recalls its recommendation to the State party in its concluding observations, in which it urged the State party to provide for the establishment of a national register of prisoners and to guarantee the right of prisoners to have access to a doctor and to communicate with their family.[20] In the light of this recommendation and the lack of information provided by the State party on the subject, the Committee can only note that, in the present case, the State party has failed to fulfil its obligations under article 11 of the Convention.

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[18] CAT/C/DZA/CO/3, para. 5.

[19] Such measures include, inter alia, maintaining an official register of detainees, the right of detainees to be informed of their rights, the right promptly to receive independent legal and medical assistance, and to contact relatives, the need to establish impartial mechanisms for inspecting places of detention, and the availability of legal remedies and of the right to contest the legality of their detention and treatment (general comment No. 2 (2008), para. 13).

6.6 With regard to articles 12 and 13 of the Convention, the Committee has taken note of the allegations of the complainant who, despite what she has been told by the State party, doubts whether the State party carried out any investigation at all, given that none of the witnesses to the events has ever testified in any legal proceeding. The complainant has also asserted that, by failing to inform the family of the results of the investigation that was reportedly conducted, the State party has precluded the possibility of any criminal action being brought by the family. The Committee recalls that, on 23 December 2006, Mounir Hammouche was arrested by DRS agents; that his family received no further news of him until 29 December 2006, when agents identifying themselves as members of the "security services" visited Mounir Hammouche's home to announce to his family that he had died, claiming that he "had probably committed suicide"; that on that same day, Mounir Hammouche's body was returned to his family, who detected numerous injuries to his body, in particular a head injury and bruises on his hands and feet; and that the family was denied access to the report of the autopsy that, according to the security services and judicial authorities of the State party, had been carried out. The family took the case first to the public prosecutor of Ras El Oued and then to the chief prosecutor of Constantine, who upheld the theory that the victim had committed suicide, while simultaneously refusing to give the family the report of the autopsy that had supposedly been carried out. The Committee observes that, despite the existence of visible signs of torture on the victim's body and of statements to the effect that Mounir Hammouche, like his fellow prisoners, had been brutally tortured by DRS agents in the Territorial Centre for Research and Investigation in Constantine, no investigation has been carried out by the State party to shed light on the events leading to the death in custody of Mounir Hammouche, seven years after the events in question. The State party has not submitted any information that would contradict these facts. The Committee considers that so long a delay in initiating an investigation into allegations of torture is patently unjustified and clearly breaches the State party's obligations under article 12 of the Convention, which requires it to proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed.[21] The Committee also recalls that, during its dialogue with the State party in 2008, it had expressed its concern regarding the case of Mounir Hammouche and had reminded the State party of its obligation to launch a prompt and impartial investigation immediately and systematically in all cases where there are reasonable grounds to believe that an act of torture has been committed, including cases in which a prisoner has died. By failing to meet this obligation, the State party has also failed to fulfil its responsibility under article 13 of the Convention to guarantee the right of the complainant and her family to lodge a complaint, which presupposes that the authorities provide a satisfactory response to such a complaint by launching a prompt and impartial investigation.

6.7 Regarding the complainant's allegations under article 14 of the Convention, the complainant has asserted that, by depriving Mounir Hammouche's family of the opportunity to bring legal action under criminal law, the State party has deprived it of the possibility of obtaining compensation through a civil proceeding, since, under Algerian law, civil court judgements are deferred until the final determination of the criminal action. The Committee refers to its general comment No. 3 (2012)[22] and recalls that article 14 of the Convention recognizes not only the right to fair and adequate compensation but also requires States parties to ensure that the victim of an act of torture obtains redress. The Committee considers redress to cover all the harm suffered by the victim and to encompass, among other measures, restitution, compensation and guarantees of non-repetition of the violations.[23] In the absence of a prompt and impartial investigation, despite the existence of circumstances strongly suggesting that Mounir Hammouche died in custody as a result of torture, the Committee finds that the State party has also failed to fulfil its obligations under article 14 of the Convention.

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[20] CAT/C/DZA/CO/3, para. 5.

[21] See, inter alia, communications No. 341/2008, *Sahli v. Algeria*, decision adopted on 3 June 2011, para. 9.6 and No. 269/2005, *Ali Ben Salem v. Tunisia*, decision adopted on 7 November 2007, para. 16.7.

7. The Committee against Torture, acting under article 22, paragraph 7, of the Convention, is of the view that the facts before it disclose a violation of articles 1, 2 (para. 1), 11, 12, 13 and 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

8. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee urges the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in conformity with the above Views, including to conduct an impartial investigation into the events in question for the purpose of prosecuting those allegedly responsible for the victim's treatment; to hand over to the complainant the victim's autopsy report and records of the preliminary investigation, as requested by her and as promised to the Committee by the representative of the Government of the State party in May 2008; and to ensure that the complainant obtains full and effective redress.

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[22] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 44* (A/68/44), annex X, paras. 2 and 6.

[23] See *Sahli v. Algeria*, para. 9.7.

Communication No. 387/2009: *Dewage v. Australia*

Submitted by:	Sathurusinghe Jagath Dewage (represented by counsel, Christopher Yoo and Luke Pistol of Balmain for Refugees)
Alleged victim:	The complainant
State party:	Australia
Date of complaint:	1 June 2009 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 14 November 2013,

Having concluded its consideration of complaint No. 389/2009, submitted to the Committee against Torture by Sathurusinghe Jagath Dewage under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is Jagath Sathurusinghe Dewage, a Sri Lankan national of Sinhalese ethnic origin, born on 23 November 1970. He claims that his deportation from Australia to Sri Lanka would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment. He is represented by counsel.

1.2 On 30 June 2009, in application of rule 114 (former rule 108), paragraph 1, of its rules of procedure (CAT/C/3/Rev.5), the Committee requested the State party not to deport the complainant to Sri Lanka while his complaint was being considered by the Committee.

Factual background

2.1 The complainant was born in Aluthgama village in Matale District, Sri Lanka. He worked as an employee at the Sri Lankan Transport Board in Matale. His family was known to be prominent supporters of the United National Party (UNP), and he himself became involved with the UNP as an activist when he was 18 years old. In 1996, he was appointed by the UNP minister in Central Province to be the UNP organizer in Aluthgama village. His role was to get new members to join the party.

2.2 In 1998, the same minister asked the complainant to stand for elections as a committee member of the National Employees Trade Union ((Jathika Sevaka Sngamaya (JSS)), which is affiliated with the UNP. He was first elected as a committee member of the Central Region organization of the Union and later, as organizer of the JSS Transport Board Central Region Committee, which was the top leadership position. His duties included maintaining JSS membership level intact and dealing with organizational matters.

2.3 Among other achievements, he created a fund to help workers who had lost their jobs, and he had a bus refurbished as an emergency vehicle to take workers to hospital. Many workers were attracted by these benefits and started joining the JSS to the detriment of the People's Liberation Front Union (Janatha Vimukthi Peramuna (JVP)) of the Sri Lanka Freedom Party (SLFP). Seeing inequalities in the participatory system of trade unionists, the complainant started openly criticizing the system in 2000 and encouraged JSS members not to report for duty while SLFP and JVP members participated in their rallies. This made him increasingly unpopular with SLFP and JVP.

2.4 As a result of losing their members, and therefore votes, members of JVP and SLFP constantly clashed with the complainant and physically harassed him on several occasions. In 2000, a JVP leader in the Pradeshiya Sabha Provincial Council in Matale, one Mr. L.A, became particularly active in harassing the complainant. Mr. L.A was known for his involvement with the militant wing of JVP, which was allegedly responsible for the killings of political opponents. He was with JVP when the movement staged a violent rebellion against the Government in 1988 and 1989. Mr. L.A. was allegedly jailed for killing UNP members at the time of the rebellion; when JVP came to power in 1994, he was released from jail. By 2000, Mr. L.A. knew about the complainant's political activities; his house was frequently visited at night by 10 to 12 men looking for him. This prompted the complainant to move from Matale to Gokarella in 2000, although he continued working in Matale and continued his activities as the UNP organizer in Aluthgama village.

2.5 In 2001, before the election of the new Prime Minister, the complainant was involved in organizing a nationwide strike to protest against the privatization of the Transport Board. After the UNP won the 2001 elections, the complainant joined the JSS Youth League and was subsequently elected to the UNP Youth League (Youn Peramuna) in Matale.

2.6 Between the 2001 and 2004 elections, he was periodically harassed at his workplace but not as frequently as he was prior to 2001. After the UNP lost the 2004 elections, SLFP and JVP merged into the United People's Freedom Alliance (UPFA) and formed a government. For about two weeks after the elections, the complainant did not report for work, knowing that he would be harassed. He finally returned to work because of the police presence at the Transport Board depot, but JVP and SLFP members would not let him sign the attendance sheet. Other UNP members, however, were allowed to sign in. The complainant went to the police and filed a complaint. As a result, the harassment intensified. In June 2004, he was transferred against his will to another depot in Teldenyia, where he was the only UNP member. Despite the transfer, the harassment by JVP and SLFP members continued in various forms, including death threats.

2.7 Two months after the transfer, the complainant was told by the SLFP union secretary that he was going to be transferred to the Trincomalee depot, located in the LTTE (Liberation Tigers of Tamil Eelam) conflict zone. The complainant decided to quit his job at the Transport Board and earn his living by growing and selling vegetables.

2.8 In September 2004, he complained to the UNP about the treatment he had been subjected to by SLFP and JVP. Allegedly, after investigating his claims, the UNP Political Revenge Committee confirmed in a letter dated 20 August 2005 that he had been subjected to severe political revenge and injustice. In the meantime, the complainant decided to leave Sri Lanka, as he was unable to find a job and people were looking for him. On 25 January 2005, he unsuccessfully tried to enter Japan and had to return to his home in Gokarella, where he started organizing activities for the UNP in preparation for the November 2005 presidential elections. One Sunday in July 2005, he was going to buy food at the market when Mr. L.A. drove up and asked him, in Sinhala, to get into the van. The complainant was confused and scared, and considered that it would be more dangerous to refuse to get into the van. On the way to Gokarella market, Mr. L.A. questioned him about his political activities and, at gunpoint, told him that he should stop working with the UNP, then he pushed him out of the van.

2.9 Since the JVP knew that he was back in Gokarella, the complainant and his wife started to fear for their lives. For a short period, they stayed at a friend's house in Trincomalee, but had to come back to Gokarella because the police started to get suspicious about the reasons for their presence in the LTTE conflict zone. The complainant then tried to obtain a visa to leave Sri Lanka through the same person (an LTTE member) who had earlier arranged his visa to Japan. The day the complainant went to this person's jewellery shop to pay him for his assistance with the visa, the shop was inspected by the police. The complainant was taken by this person's companion through a tunnel to a room full of weapons belonging to the LTTE. When the complainant realized that he would be accused by the Government of giving money to the LTTE, he asked to be let go. Instead, he was tied to a chair and gagged by the two men (allegedly LTTE members) present in the room. He fainted when they put a knife to his throat and cut it.

2.10 He was kept in the tunnel room for approximately seven hours, then in the jewellery shop for about three weeks before he was told, on 18 or 19 September 2005, that his visa was ready. His captives arranged for him to travel to Melbourne, Australia, with another man. He arrived in Australia on 22 September 2005. Since he did not know anyone in Melbourne, he stayed with a group of Tamils. On 4 November 2005, he filed an application for a protection (class XA) visa with the Australian Department of Immigration and Multicultural and Indigenous Affairs under the 1958 Migration Act.

2.11 The first time that the complainant met with an immigration officer for his protection visa, he did not tell him about the way in which he had obtained the visa to enter Australia, out of fear of being sent back to Sri Lanka. Some time later, the complainant was asked by the immigration officer about the people with whom he was staying in Melbourne. As he was still staying with LTTE supporters, who could have read his correspondence with the Australian authorities regarding the protection visa, the complainant did not tell the immigration officer about the treatment he had been subjected to in Sri Lanka by LTTE members.

2.12 Some months after Australian authorities learned about how he had obtained his visa in Colombo, his wife's house in Gokarella was broken into by Tamils who destroyed some of the belongings and left a note threatening to kill everyone in his family. The complainant's wife moved to Trincomalee and he has not heard from her since. On 9 February 2009, his mother's house was broken into by Mr. L.A. and officials from the Yatawaththa Divisional Council and the Matale Development Council. The complainant's mother was injured and reported to Matale hospital police station on 10 March 2009.[1]

2.13 In December 2005, the complainant's application for a protection visa was refused by the Australian authorities, who considered that his fear of persecution in Sri Lanka was ill-founded. The complainant applied for a review of this decision to the Refugee Review Tribunal (RRT), which was rejected on 18 April 2006. In May 2006, he appealed for judicial review of the RRT decision to the High Court of Australia, which remitted it to RRT on 28 July 2006. On 28 July 2006, he appealed to the Federal Court, but was rejected on 31 July 2007. On 28 August 2007, he again appealed to the High Court of Australia, but withdrew the appeal on 20 November 2007.[2]

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[1] The complainant relies on written testimony from his mother, extracted from the information book at Matale hospital police station.

[2] The complainant does not explain why he withdrew the appeal.

2.14 On 19 December 2007, 28 November 2008, 11 March 2009 and 27 May 2009, the complainant applied for intervention by the Minister for Immigration, but all four applications were deemed as not meeting the guidelines and were not referred to the Minister for consideration. On 5 June 2009, the High Court of Australia decided to adjourn the hearing of the complainant's case and to stay his removal for two weeks to allow the Minister for Immigration to investigate the matter more thoroughly. At the time of submission of the original complaint to the Committee against Torture (June 2009), the matter was pending a final decision by the Australian Minister for Immigration. As the complainant was almost certain that he would be deported in the two-week time frame, he decided to submit his claim to the Committee.

The complaint

3.1 The complainant claims that his forcible deportation to Sri Lanka would amount to a violation of article 3 of the Convention as he fears that he will be tortured by the Sri Lankan authorities because of his past involvement as a local UNP and JSS Transport Board organizer.

3.2 The complainant also claims that, in his current situation, if he is returned to Sri Lanka, he would be killed or harmed by the LTTE for having divulged information on the process by which he illegally obtained a tourist visa to enter Australia.

State party's observations on admissibility and the merits

4.1 On 12 November 2010, the State party submitted its observations on the admissibility and the merits. It considers that the complaint should be declared inadmissible as it is manifestly ill-founded. The State party also states that the allegations concerning torture by the LTTE should be declared inadmissible as they are incompatible with the provisions of article 22, paragraph 2, of the Convention. In any event, the State party considers the complainant's claims to be without merit as they have not been supported by any evidence that there is a real risk that he would be subjected to torture upon return to Sri Lanka.

4.2 After outlining the facts of the case, the State party describes the procedure that the complainant followed at the national level, adding that on 22 July 2008, after the Minister for Immigration had indicated that he would not consider exercising ministerial intervention in the complainant's case, the complainant became unlawfully present in Australia. The complainant was located on 20 November 2008 and subsequently detained in Maribyrnong Immigration Detention Centre. The complainant's three subsequent requests for ministerial intervention were rejected. On 10 February 2009, the Attorney General's Office initiated a request to the Minister, under section 417 of the Migration Act, on the basis of a report on the complainant's mental health by a clinical psychologist of Victorian Foundation for Survivors of Torture Inc. (a non-government organization also known as Foundation House). On 25 February 2009, the Minister decided not to intervene. On 5 March 2009, the complainant was notified of the State party's intention to deport him on 14 March 2009.

4.3 In addition to submitting his complaint to the Committee against Torture, the complainant also filed an application with the High Court of Australia for review of the decision of the immigration department officer who refused to refer his request for ministerial intervention of 27 May 2009 to the Minister for Immigration. The complainant's removal was suspended and on 10 July 2009, the High Court dismissed the complainant's application. On 14 October 2009, the Minister placed the complainant in community detention.

4.4 With regard to the complainant's allegation of fear of torture by Sri Lankan authorities, the State party considers that the complainant has failed to substantiate a foreseeable, real and personal risk. During the asylum procedure, the complainant relied on documents from the United Nations High Commissioner for Refugees (UNHCR) and non-government organizations to support his claim that as a member and organizer of the UNP and JSS, he was personally at risk of maltreatment from Sri Lankan authorities. While the UNHCR guidelines issued in 2009 indicate that political figures and officials who publicly express criticism of the Sri Lankan Government are at risk of targeted action by Sri Lankan Government actors or pro-Government paramilitary groups, other material relied on by the complainant indicates that the majority of serious incidents have been directed towards electoral candidates. As the complainant has not provided evidence of continued political involvement with the UNP since leaving Sri Lanka and as there has been a significant lapse of time since his departure, these reports do not provide sufficient evidence that he would be at a foreseeable, real and personal risk of being subjected to torture upon return to Sri Lanka.

4.5 Furthermore, guidelines issued by UNHCR in 2010, in the context of an improved human rights and security situation following the end of the armed conflict between the Sri Lankan army and the Liberation Tigers of Tamil Eelam (LTTE) in May 2009, indicate that there is no longer a need for "group-based" protection mechanisms. The 2010 guidelines note, however, that it is important to bear in mind that the situation in Sri Lanka is evolving.[3]

4.6 The treatment to which the complainant was subjected is not torture as defined by article 1 of the Convention against Torture. He claims that he was subjected to obstruction from work, verbal and physical abuse, mistreatment of personal belongings, destruction of property and a death threat. The Committee has in the past considered that the burning of a house in the absence of other aggravating circumstances (such as people occupying the house at the time of destruction) does not constitute torture.[4] Furthermore, the complainant had submitted a request for assistance to the UNHCR office in Canberra, which decided that there were insufficient grounds to intervene with the Australian authorities on behalf of the complainant.

4.7 The State party considers that if returned to Sri Lanka, the complainant could use his affiliation to the UNP to relocate elsewhere in the country. Indeed, the UNP has strong representatives throughout the country and governs certain local councils in the complainant's district. The State party notes that the Committee, in its jurisprudence, has considered that when a person can relocate to another part of the country, article 3 of the Convention is not violated.[5]

4.8 During the asylum procedure, the Refugee Review Tribunal (RRT) took into account that the complainant was a member of the UNP and had been involved in the JSS and may have, on occasion, been harassed by his political opponents; but it was not convinced that this amounted to persecution within the meaning of the Refugee Convention. The RRT considered that the JVP was not particularly interested in the complainant and that the chances of him being persecuted for his political opinion if he were returned to Sri Lanka were remote. The RRT considered that the numerous threats that the complainant allegedly received from Mr. L.A. did not result in any concrete act. As for the recruitment, the RRT did not find this allegation credible, as a party would not have any advantage in forcefully recruiting someone who would never show allegiance to it.

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[3] The State party cites *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*, 5 July 2010 (HCR/EG/SLK/10/03) available at http://www.refworld.org/docid/4c31a5b82.html.

[4] The State party cites Committee against Torture, communication No. 161/2000, *Dzemajl et al. v. Yugoslavia*, decision adopted on 21 November 2002, para. 9.2.

[5] The State party refers to Committee against Torture, communication No. 245/2004, *S.S.S. v. Canada*, decision adopted on 16 November 2005, para. 8.5.

4.9 The State party points at the inconsistencies between the information provided in the protection visa application and that provided at the RRT hearing. The complainant explained at the time that the divergences were linked to his mental state at the time of his first application. The State party notes, however, that according to the psychological report provided by Foundation House on 8 February 2009, the complainant's anxiety and depression were exacerbated by events in immigration detention, such as visa refusals and the prospect of repatriation. The State party also notes a series of inconsistencies and omissions in the complainant's case, including with regard to events of intimidation that he reported for the first time in his third request for ministerial intervention on 27 May 2009. There are also discrepancies concerning the complainant's disclosure — to the Australian authorities during the asylum procedure and to the psychologist of Foundation House, as contained in the second report dated 25 October 2009 — of how he obtained the visa to come to Australia. The State party notes on this aspect that this report was submitted with the complainant's fourth request for ministerial intervention dated 15 February 2010, after the communication was submitted to the Committee against Torture.

4.10 The complainant relies on written testimony from his mother, taken from the information book of the Matale hospital police station. This testimony alleges that in February 2009, people invaded the house of the complainant's mother in search of the complainant, and that the property was destroyed and his mother injured. However, this testimony differs from the testimony obtained from the information book of the Warakapola Police Station, which was provided to Australian Immigration authorities with the application for ministerial intervention dated 27 May 2009, which contains no evidence of Government involvement. The same incident was referred to in the psychological report submitted with the request for ministerial intervention on 15 February 2010, except that it states that the perpetrators were Tamil-speaking men. This detail concerning the alleged perpetrators was for the first time presented before the Committee. These discrepancies caused the State party to question the veracity of the allegations submitted by the complainant. The four-year lapse in time between the complainant's original political activity and the claim of retributive activity on the part of Sri Lankan government officials towards the complainant's mother brings into doubt the connection between the two sets of events.

4.11 As for the complainant's allegations regarding a risk of torture by the LTTE, the State party considers it inadmissible because it is incompatible with the provisions of the Convention against Torture. The acts mentioned by the complainant cannot be considered torture under article 1 of the Convention as they would not be committed by, at the instigation of or with the consent or acquiescence of a public official or any other person acting in an official capacity. The Committee has, in its jurisprudence, considered that fear of harm from non-government entities, such as the LTTE, are not covered by article 3 of the Convention.[6]

4.12 In the alternative, the State party submits that the complainant's allegations regarding treatment by the LTTE are manifestly ill-founded and marked by inconsistencies that undermine their merit. While the medical examination of the complainant has indicated that he has a scar, there is no evidence that the scar was obtained by torture. Moreover, the complainant did not mention that he had a scar to the psychologist from Foundation House. The complainant also told the psychologist that he had been detained by the LTTE for three days, whereas in his requests for ministerial intervention dated 27 May and 4 June 2009, and in his communication to the Committee, he mentions a period of detention of three weeks. Discrepancies were also noted in his account of those events with the LTTE in the applications for ministerial intervention dated 27 May and 4 June 2009. The State party notes that the complainant was assisted by an accredited interpreter during the hearing before the RRT and therefore cannot invoke language barrier to explain those discrepancies.

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[6] See Committee against Torture, communication No. 138/1999, *M.P.S. v. Australia*, decision adopted on 30 April 2002, para. 7.4.

4.13 In any event, since the defeat of the Liberation Tigers of Tamil Eelam (LTTE) by Sri Lanka forces in May 2009, LTTE's capacity to exert influence or commit aggressive acts has been curtailed.

Complainant's comments on the State party's observations

5.1 On 1 April 2011, the complainant provided his comments. He states that he was diagnosed with post-traumatic stress disorder (PTSD) and a major depressive disorder linked to torture and trauma suffered in Sri Lanka.[7] The report of 8 February 2009 by a clinical psychologist of Victorian Foundation for Survivors of Torture Inc. (Foundation House) states that the source of the complainant's condition is his belief, which appeared genuinely held, that his life would be imperilled if he were repatriated, and fears for the well-being of his family. This conclusion was corroborated by four other medical reports which link his mental illness with his past experiences.[8]

5.2 To explain the way his mental health issues played a role in his attempts to make a protection claim in Australia, the complainant refers to the Refugee Review Tribunal (RRT) process. Despite the fact that he was suffering from PTSD, the complainant was not examined by any mental health professional until he was detained at Maribyrnong Immigration Detention Centre in 2008. None of the above-mentioned reports were available at the time when his protection visa application was considered or when the RRT was considering his case. The medical reports indicate that the complainant has suffered from PTSD symptoms since his arrival in Australia up to the present, which includes the period of time during which the RRT process took place.[9] Therefore, his subsequent detention and threats of forceful return to Sri Lanka might have exacerbated his PTSD, but were not the cause of it.

5.3 With regard to the inconsistencies and omissions noted during the RRT hearing, the medical report dated 17 March 2011 states that any assessment of any apparent inconsistencies in the complainant's account would need to be considered in the light of the fact that his capacity to concentrate and perform well under situations such as cross-examination would be affected not only by his PTSD and major depression illnesses, but also because the matters which are discussed would evoke distress and compromise his capacity to give a consistent and accurate story. In spite of this, the RRT did not take into account the complainant's mental illnesses when considering what it took to be inconsistencies and omissions in his account. The RRT only considered that the burden of proof was on the complainant to bring medical evidence before it.

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[7] The formal diagnosis was made on 17 March 2011 by consultant forensic psychiatrist, Dr. John Albert Roberts (annexed to counsel's comments).

[8] See psychological report of 22 December 2008 by Vania Ambesi, Professional Support Services, Maribyrnong Immigration Detention Centre (MIDC); report of 8 February 2009 by clinical psychologist, Guy Coffey, Foundation House; report of 7 May 2009 by Dr. Tony Falconer, International Health and Medical Solutions Pty Ltd (IHMS); report of 25 October 2009 by clinical psychologist, Heyam Haddad, New South Wales (NSW) Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS); report of 8 February 2011 by clinical psychologist, Pearl Fernandes, STARTTS; and report of 17 March 2011 by consultant forensic psychiatrist, Dr. John Albert Roberts.

[9] The complainant refers to the report of 8 February 2009 by clinical psychologist, Guy Coffey, Foundation House, and the report of 25 October 2009 by clinical psychologist, Heyam Haddad, NSW-STARTTS.

5.4 The complainant contends that the UNHCR 2009 guidelines are relevant in his case as it confirms that Sinhalese who are perceived to oppose government policies, as well as political figures and officials of any party who express public criticism of the Government, are at risk of targeted action by government actors or pro-Government paramilitary groups.[10] Given the complainant's profile in the UNP as an outspoken critic of the Sri Lankan Government and his leadership in trade union protests and rallies, the guidelines corroborate his claims of being at risk of targeted action. In its observations, the State party quotes the UNHCR 2010 guidelines, which state that there is no longer a need for the formerly recommended "group-based" protection measures and "presumption" of eligibility (solely on the basis of risk of "indiscriminate harm") for Tamils from the north. However, given that the complainant is not a Tamil from the North who is fleeing generalized violence, it is difficult to understand the relevance of this quotation to his claims.

5.5 With regard to the current human rights situation in Sri Lanka, the complainant considers that there is still an atmosphere of repression and impunity whereby the Sri Lankan government security apparatus targets various segments of Sri Lankan society, including trade unionists and activists in opposition political parties.[11] A recent United Kingdom Home Office country of origin report states that there have been frequent attacks on JVP offices and campaigners, both during the southern provincial election campaign in July and August 2009, and since the presidential campaign began in November 2010.[12]

5.6 With regard to personal risk, the complainant reiterates his allegations and contends that his political opponents in the Sri Lankan Government have identified and targeted him as a result of his political and trade union activities. The incidents set out in the statement include attacks at rallies, at which he spoke, by a group which included a member of the Sri Lankan Government; the search for him at his family home by political thugs, including a member of the Sri Lankan Government; his detention and beating with wire by SLFP and JVP members; several verbal death threats; his being threatened at gunpoint by a member of the Sri Lankan Government; and, in 2009, another search for him at his mother's house (his former residence) by political thugs, in which his mother was injured; and the subsequent burning of the home.

5.7 The complainant also presents new evidence, namely a letter dated 12 February 2011 by the Chief Opposition Whip in the Sri Lanka Parliament, and a letter dated 10 March 2011 by the General Secretary of the UNP trade union, JSS, describing his role in the trade union and mentioning the threats to his life if he were to return to Sri Lanka.

5.8 With regard to the State party's argument that the UNHCR Regional Office in Canberra declared that it would not intervene in his case, the complainant states that the opinion was given before he had adequate assistance, and it is difficult to comment on it since no arguments were given in support of the decision. The complainant adds that it is unlikely that any information related to his mental condition had been transmitted to UNHCR.

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[10] The complainant refers to *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*, April 2009, pp. 23–26, available at http://www.refworld.org/docid/49de0b6b2.html.

[11] The complainant refers, inter alia, to Human Rights Watch, *World Report 2011*: Sri Lanka, January 2011; United Kingdom: Home Office, *Operational Guidance Note: Sri Lanka*, March 2011 (OGN v 11.0); REDRESS, *Submission from AHRC, RCT and REDRESS to UN Panel on Sri Lanka*, 15 December 2010.

[12] United Kingdom: Home Office, *Country of Origin Information Report – Sri Lanka*, 11 November 2010.

5.9 The complainant states that any possibility for him to relocate in Sri Lanka cannot be envisaged in the current climate, which includes a clampdown on opposition activists and the use of emergency powers to detain those who are perceived to oppose the Government. Given the tight control the Government has over its territory, internal relocation is not likely to avoid the risk of persecution.

5.10 With regard to the physical marks of torture, the medical report of the NSW Refugee Health Service dated 14 March 2011 confirms the existence of scars on the left side of his neck, right flank, over left pelvis and over the lumbar spine. They are not recent scars, although the doctor could not comment on their exact age or cause. The medical report, dated 17 March 2011 confirms scars on the complainant's lower back and abdomen, and that those scars are consistent with the alleged trauma.

5.11 With regard to the alleged discrepancies concerning the complainant's disclosure of how he obtained his visa to Australia to the Australian authorities and subsequently to the psychologist on 25 October 2009 (para. 4.9 above), both the purpose for which the psychological report was made and the manner in which it was initiated should be considered. The psychological report did not have an investigative aim, but rather sought to facilitate therapy. The complainant was never able to review the content of the report, and since he was not assisted by an interpreter for that purpose, misunderstandings might have occurred.

5.12 As noted by the State party, the same report refers to the destruction of his mother's home and identifies the alleged perpetrators as Tamil-speaking men, which allegedly contradicts the version given to the Australian authorities. The complainant alleges that there may have been confusion between him and the psychologists, as two different events were referred to during the interview, namely the invasion of the house that the complainant and his wife had rented in Gokarella, and the invasion and destruction of his mother's property.[13] Contrary to the State party's contention, the latter event cannot be dissociated from the other harassment episodes experienced by the complainant before he left Sri Lanka.

5.13 As for his alleged torture by the LTTE, the complainant acknowledges that the 2009 defeat of the LTTE has curtailed its capacity to exert influence or commit aggressive acts. Moreover, in terms of the priorities of the entire LTTE organization, it is improbable that he would be a high priority target for reprisal. Nonetheless, the complainant is genuinely apprehensive that the people with whom he had personal dealings and who were connected to the LTTE, as well as other people in their network may wish to harm him if they become aware that he had returned to Sri Lanka. Regarding the status of the LTTE as a non-State actor, article 1 of the Convention against Torture also refers to acts committed at "the instigation of or with the consent or acquiescence of" public officials. Given that the complainant is at risk from the Sri Lankan Government itself, it is foreseeable that should he advise the Government of his predicament and fears (concerning attack by the LTTE), the Sri Lankan Government is not likely to actively seek to protect him.

5.14 On the discrepancies related to his past detention by the LTTE (para. 4.12 above), contrary to the State party's assertion, the complainant did show his scars to the Foundation House psychologist, as evidenced by a letter dated 18 June 2009 by the complainant's counsel to the Department of Immigration and Citizenship (DIAC), with an explanation that

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[13] Both events are referred to in the complainant's statement dated 27 May 2009.

DIAC found satisfactory at the time.[14] The complainant considers that many of the inconsistencies pointed out by the State party are linked to his lack of command of English and the PTSD from which he was already suffering at the time.

State party's further observations

6.1 On 16 December 2011, the State party considers that the new information provided by the complainant does not contain any evidence to support the admissibility of his allegations. The complainant relies heavily on the UNHCR 2010 guidelines on Sri Lanka; however, the guidelines, in this context, primarily refer to violence directed towards human rights activists and journalists.[15] Trade unionists and supporters of the UNP are not specifically identified in the guidelines as being at risk of violence from Sri Lankan Government authorities.

6.2 With regard to the general situation in Sri Lanka, recent reports indicate an improved human rights and security situation following the end of the armed conflict between the Sri Lankan army and the LTTE in May 2009. Reports of behaviour which might constitute torture for the purposes of article 1 of the Convention — that is, with the consent or acquiescence of a Sri Lankan public official or other person acting in official capacity — have largely been directed towards people suspected of being LTTE sympathizers or operatives.[16] A significant period of time has passed since the complainant's departure from Sri Lanka in 2005. During the presidential elections in January 2010, the people affiliated with the UNP who were targeted were not solely targeted because they were members of the UNP, but also because they were members of the left-wing Sinhalese-nationalist People's Liberation Front (JVP) or the Tamil National Alliance (TNA), which is not the complainant's case.

6.3 The complainant provided two letters: one from a Member of Parliament from the UNP and one from the General Secretary of the trade union, Jathika Sevaka Sngamaya. While these letters confirm the complainant's involvement with the UNP and JSS, they do not provide any new evidence that the complainant is at a foreseeable, real and personal risk of torture by the Sri Lankan authorities. For example, the letters do not identify who might harm the complainant, aside from generally referring to "political vigilante groups" and "political opponents." On the whole, recent country information and letters provided merely indicate that the complainant might be at a generalized risk of harm if he was returned to Sri Lanka, because of the current political and social climate, but does not indicate any personal and present danger of encountering harm by Sri Lankan authorities.

6.4 The complainant asserts that he would not be able to relocate within Sri Lanka and substantiates this claim with a conclusion drawn in a United Kingdom Home Office operational guidance note to the effect that applicants perceived to be active or influential in opposition to the Sri Lankan Government may be at risk of persecution by the State. However, this conclusion largely concerns journalists, lawyers, human rights activists and supporters of the current political opposition — a coalition led by General Sarath Foneska — which has a different composition to the UNP that the complainant supported when he was in Sri Lanka. Finally, there is little evidence to suggest that the complainant would be at risk of torture by the Sri Lankan authorities if he were to return to Matale District (where the complainant lived and which is in the south-central part of the country). The main areas of unrest in Sri Lanka are in the north and east, where the civil conflict with the LTTE took place.

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[14] See the minutes of the Department of Immigration and Citizenship dated 19 June 2009, annex R to the complainant's comments.

[15] The State party refers to the *UNHCR Eligibility Guidelines*, 5 July 2010 (HCR/EG/10/02), pp. 6–7.

[16] The State party refers, inter alia, to the United States Department of State, *2010 Country Reports on Human Rights Practices – Sri Lanka*, 8 April 2011.

6.5 With regard to the psychological reports submitted to the Committee, they only establish that the complainant experienced some kind of trauma in the past (which the State party submits was not the result of torture by the Sri Lankan Government). No new evidence has been provided to suggest that he is presently at risk of torture by the Sri Lankan Government if he were to return to Sri Lanka. The psychological report dated 1 April 2011 notes that the complainant's current mental health issues are predominantly linked to his current predicament (i.e., his community detention) and the uncertainty surrounding his appeal for a protection visa. While the report notes that he experiences recollections of his alleged incarceration by the LTTE, there is no new evidence linking the complainant's mental health to torture carried out by Sri Lankan government authorities. While the State party acknowledges that the complainant has a history of mental illness in connection with his ongoing detention, his difficulties in articulating his experiences in Sri Lanka and the subsequent psychological evidence provided do not have a material impact on the merits of his claims that he is at a real and personal risk of torture if he is returned to Sri Lanka.

6.6 While the medical reports establish that the complainant has scars on his body, they do not provide conclusive proof that they were caused by groups opposed to the UNP, that these groups were affiliated with or agents of the Sri Lankan Government or that the complainant is in personal and present danger of experiencing torture if returned to Sri Lanka.

6.7 Notwithstanding its position in relation to the admissibility of the complainant's claim of torture by the LTTE, the State party considers that the complainant's comments do not provide any new evidence to suggest a continuing real, personal and present risk of torture by the LTTE since he arrived in Australia, and accordingly, his allegations are unmeritorious.

Complainant's further information

7.1 On 21 March 2012, the complainant submitted additional documents to the Committee, including newspaper articles stating that Mr. L.A., the government official who had allegedly threatened the complainant at gunpoint, had surrendered to the police in August 2010, after allegedly abducting and assaulting three people. Another article dated 28 March 2011 states that after that incident, Mr. L.A. was re-elected to his position as Chairman of Yatawatta Pradeshiya Sbha in Matale District. The last article dated 1 February 2011 indicates that Mr. L.A. stood as a United People's Freedom Alliance (UPFA) candidate in the March 2011 local government elections. The complainant confirmed that the above information was not presented to the Australian immigration authorities.

7.2 On 27 April 2012, the complainant submitted a report from the Edmund Rice Centre (ERC)[17] on its investigations in Sri Lanka with regard to the complainant's situation, which included discussions with human rights lawyers, senior opposition, political figures, trade union officials and others. The report substantiates the credibility of the complainant's account that he would face a very significant risk of torture at the hands of Government actors, including Mr. L.A. or persons affiliated with the Government through the trade union of the government party. The Chief Opposition Whip in the Sri Lankan Parliament

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[17] The Edmund Rice Centre is involved in a range of projects and activities across the four areas of its operation in research, community education, advocacy and networking (see http://www.erc.org.au/).

(see para. 5.7 above) with whom the NGO team met stated that the Government is persistent in hunting down political opponents and that after an election, the party which comes to power harasses opposition supporters to punish them for supporting their political opponents. A discussion with senior JSS representatives confirmed that the wounds noted on the complainant's body at the time were the result of an assault with a cable and other forms of humiliation aimed at forcing him to worship the President. The complainant's complaint was being investigated by the UNP Political Revenge Committee. According to the ERC report, there is an additional risk for the complainant, linked to his status as failed asylum seeker who could be suspected of having links with the LTTE.

7.3 Given that the State party is in contact with the Sri Lankan authorities in its fight to halt the smuggling of asylum seekers, the complainant is concerned that the information he provided to the Australian Government may have been provided to the Sri Lankan authorities following his disclosure in May 2006. If the State party returns the complainant to Sri Lanka he will be questioned upon arrival at the international airport by the authorities, including the Criminal Investigation Department (CID), who might take him into custody and interrogate him. Sri Lankan authorities routinely use torture, including on returned asylum seekers following their arrival at the international airport, as evidenced by a number of reports by NGOs, including Human Rights Watch.[18] Building on individual accounts from failed asylum seekers who had been imprisoned and tortured after returning to Sri Lanka from Australia, ERC concludes that the complainant is likely to face similar risks of torture. The torture allegedly practiced by CID Colombo includes blunt trauma, burning (with molten metal), suspension, sexual assault, rape and mock execution.[19] The complainant is at a heightened risk of torture during interrogation as a returning asylum seeker because he actually had connections with the LTTE before and after leaving Sri Lanka.

7.4 Due to his severe mental illnesses, the complainant is more likely to have difficulties in an interrogation with authorities such as the CID, as set out in the report from the Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS).[20] His history of trauma will make him vulnerable to the aggressive suspicions of a very unprofessional police force.[21]

7.5 On 14 November 2012, the complainant submitted additional clarification relating to the admissibility of the communication. He considers that the Committee should admit the new evidence submitted as his situation can be distinguished from previous Committee decisions in which evidence has been found inadmissible on the basis of non-exhaustion of domestic remedies. Moreover, the Committee should admit his complaint regarding torture by individual members of the LTTE who assisted him with entering Australia, on the basis that the Sri Lankan Government will "acquiesce" to pain or suffering intentionally inflicted by private actors, thereby bringing the complaint within the scope of article 3 of the Convention.

7.6 The complainant notes that in each instance where the Committee has found evidence inadmissible pursuant to article 22, paragraph 5 (b), of the Convention, it has made its decision on the basis that such evidence was previously available to the complainant, who elected not to present it to the domestic authorities[22] and/or as a result of the new material or otherwise, the complainant had further domestic remedies available to them.[23] In the present case, the new evidence submitted by the complainant was not available to him at the time he originally pursued his domestic remedies and therefore he could not have submitted it to the Australian authorities at that time. Furthermore, the new evidence does not entitle the complainant to file a new application or to have his application reviewed or reheard in Australia. The only domestic remedy available to the complainant is ministerial intervention pursuant to sections 48 B or 417 of the Migration Act 1958 (Cth).

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[18] See Human Rights Watch, "UK: Halt Deportations of Tamils to Sri Lanka – Credible Allegations of Arrest and Torture upon Return", 25 February 2012.

[19] See Freedom from Torture, "Freedom from Torture submission to the Committee against Torture for its follow-up to the concluding observations from its examination of Sri Lanka in November 2011".

[20] Report attached to the complainant's further submission to the Committee of 27 April 2012.

[21] The complainant quotes report from Edmund Rice Centre, (p. 3, para. 13) (see above).

7.7 However, this is not a remedy required to be exhausted under the Convention, because it is highly discretionary, non-compellable, non-reviewable and unlikely to bring effective relief.

Additional submission from the State party

8.1 On 6 May 2013, the State party commented on the complainant's further arguments regarding the alleged acquiescence of Sri Lankan authorities to torture by the LTTE. It refers to the Committee's general comment No. 2, which indicates that consent or acquiescence to torture is comprised of two elements: (1) that the State or its officials know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State or private actors; and (2) that the State and its officials fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State actors.[24]

8.2 In the light of the above, the State party considers that the complainant has failed to substantiate his allegation in this regard. It contends that the complainant's submissions, which set out the alleged acts of torture carried out by the LTTE in August 2005, do not refer to or indicate that a public official or other person acting in an official capacity was aware or had reasonable grounds to believe that the alleged acts of torture would or did take place, or that a public official or other person acting in an official capacity failed to prevent, investigate, prosecute or punish the alleged acts of torture. For instance, the complainant does not allege that he attempted to alert Sri Lankan officials to the alleged acts of torture by the LTTE or that Sri Lankan officials were aware of the alleged torture and failed to investigate. Accordingly, no State acquiescence can be attributed to the alleged acts of torture carried out by the LTTE in August 2005.

8.3 Furthermore, the complainant's submissions do not support his claim that the Sri Lankan Government will acquiesce to the LTTE carrying out acts of torture upon his return to Sri Lanka. The complainant merely states that the Sri Lankan Government is not likely to actively seek to protect him, and he relies on the separate claim that he is at risk of persecution from the Sri Lankan Government to support his proposition. The State party considers this argument speculative and that it does not satisfy the test for "acquiescence" as set out by the Committee in its general comment No. 2. In addition to the unmeritorious nature of the complainant's claim with regard to a risk of persecution at the hands of the Sri Lankan Government, no evidence has been put forward to explain how the Sri Lankan Government would know or have reasonable grounds to believe that the complainant is at risk of torture by the LTTE. The complainant has also not provided any evidence to suggest that the Sri Lankan Government generally consents or acquiesces to the conduct of torture by the LTTE. The State party does not consider in any case that the complainant is at risk of torture by the LTTE as mentioned in its previous submissions.

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[22] See Committee against Torture, communications No. 399/2009, *F.M-M v. Switzerland*, decision adopted on 26 May 2011; No. 364/2008, *J.L.L. v. Switzerland*, decision adopted on 18 May 2012.

[23] See Committee against Torture, communications No. 35/1995, *K.K.H. v. Canada*, decision adopted on 22 November 1995; No. 30/1995, *P.M.P.K. v. Sweden*, decision adopted on 20 November 1995; No. 365/2008, *S.K. and R.K. v. Sweden*, decision adopted on 16 January 2012.

[24] Committee against Torture, general comment No. 2 (2008) on the implementation of article 2 by States parties, para. 18.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 Before considering any complaint contained in a communication, the Committee must decide whether or not it is admissible under article 22 of the Convention.

9.2 The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

9.3 The Committee considers that the communication has been substantiated for purposes of admissibility, as the complainant has sufficiently elaborated the facts and the basis of the claim for a decision by the Committee. As to the State party's arguments regarding the inadmissibility *ratione materiae* of the communication, the Committee considers that, as this issue is linked to the merits of the case, it will not deal with it at the admissibility stage. The Committee finally notes that the State party has not challenged the admissibility of the communication pursuant to article 22, paragraph 5 (b), of the Convention.

9.4 Accordingly, the Committee finds that no obstacles to the admissibility of the communication exist and thus declares it admissible.

Consideration of the merits

10.1 The Committee has considered the communication in the light of all the information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention.

10.2 The issue before the Committee is whether the expulsion of the complainant to Sri Lanka would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or return ("*refouler*") a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

10.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Sri Lanka. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would return.

10.4 The Committee recalls its general comment No. 1[25] in which it states that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion, but the risk does not have to meet the test of being highly probable; it is enough that the danger is personal and present (paras. 6 and 7). In its jurisprudence, the Committee has determined that the risk of torture must be foreseeable, real and personal. The Committee recalls that under the terms of general comment No. 1, considerable weight will be given to findings of fact that are made by organs of the State party concerned, but the Committee is not bound by such findings; rather it has the power, provided by article 22, paragraph 4, of the Convention, to freely assess the facts based upon the full set of circumstances in every case (para. 9). The Committee further recalls that the burden to present an arguable case is on the author of a communication (para. 5).

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[25] Committee against Torture, general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22 (refoulement and communications).

10.5 With respect to the risk that the complainant might be subjected to torture at the hands of government officials upon return to Sri Lanka, the Committee notes the complainant's claim that he had been harassed and threatened at gunpoint in the past by Government officials because he was an active UNP trade unionist. The Committee takes particular note of the profile of the main alleged perpetrator, Mr. L.A., who, according to the complainant, harassed him about his political activities and held and threatened him at gunpoint. Mr. L.A. was also jailed for killing UNP members; he gave himself up to the police in August 2012, after he allegedly abducted and assaulted three people; and was subsequently re-elected to his position as Chairman of Yatawatta Pradeshiya Sbha in Matale District. The Committee further notes that Mr. L.A. reportedly stood as a United People's Freedom Alliance (UPFA) candidate in the local government elections held in March 2011.

10.6 The Committee considers that the risk alleged by the complainant is real, personal and foreseeable. The Committee takes particular note of the fact that the complainant was diagnosed with post-traumatic stress disorder (PTSD) and a major depressive disorder linked to trauma suffered in Sri Lanka. It also takes note of the report from the Edmund Rice Centre (ERC) confirming his well-founded fear of being tortured and persecuted by Sri Lankan officials upon return to Sri Lanka. The State party was unable to disprove the evidence submitted by the complainant.

10.7 The report of 8 February 2009 from a clinical psychologist of Victorian Foundation for Survivors of Torture Inc (Foundation House) states that the source of the complainant's condition was the belief — which appeared genuinely held — that his life would be imperilled if he were repatriated, and fears for the well-being of his family. This conclusion was corroborated by four other medical reports that address the consistency of his mental illness with his past experiences. With regard to the physical marks of torture, the medical report of the NSW Refugee Health Service, dated 14 March 2011, confirms the existence of scars on the left side of his neck, right flank, over left pelvis and over the lumbar spine. While they were not recent scars, the doctor could not comment on their exact age or cause. The medical report dated 17 March 2011 confirms scars on the complainant's lower back and abdomen, and indicates that those scars are consistent with the alleged trauma.

10.8 As for the report from the Edmund Rice Centre (ERC) submitted on 27 April 2012, it considers that the complainant's account is credible and that he would face a very significant risk of torture at the hands of Government actors, including Mr. L.A. or persons affiliated with the Government through the trade union of the government party. The Chief Opposition Whip in the Sri Lankan Parliament (see para. 5.7 above) with whom the NGO team met stated that the Government is persistent in hunting down political opponents and that after an election, the party that comes to power harasses opposition supporters to punish them for supporting their political opponents. A discussion with senior JSS representatives confirmed that the wounds noted on the complainant's body at the time were the result of an assault with a cable and other forms of "humiliation", aimed at forcing him to worship the President. The complainant's complaint was being investigated by the UNP Political Revenge Committee, so far without any known result. The ERC report further states that there is an additional risk for the complainant, linked to his status as failed asylum seeker who could be suspected of having links with the LTTE. Again, the State party did not offer any persuasive arguments concerning the issues raised by the complainant nor, especially, on the allegations submitted in the above-mentioned reports.

10.9 Moreover, the Committee considered the State party's argument that the author's claim related to non-State actors and therefore falls outside the scope of article 3 of the Convention.[26] However, the Committee recalls that it has, in its jurisprudence and in general comment No. 2, addressed risk of torture by non-State actors and failure on the part of a State party to exercise due diligence to intervene and stop the abuses that were impermissible under the Convention.[27] In the present communication, the Committee took into account all the factors involved, well beyond a mere risk of torture at the hands of a non-government entity. The Committee assessed reports of continued and consistent allegations of widespread use of torture and other cruel, inhuman or degrading treatment in Sri Lanka,[28] as well as reports concerning mistreatment of failed asylum seekers who have profiles similar to the author's,[29] and considered that, in addition to torture by the LTTE — signs of which were corroborated by medical reports — ,the complainant was subjected to constant harassment and threats, including death threats, by government authorities and that this mistreatment intensified as he made further complaints.

10.10 In the light of the foregoing and on the basis of all the information before it, the Committee against Torture concludes that there are substantial grounds for believing that the complainant would face a foreseeable, real and personal risk of being subjected to torture by Government officials if returned to Sri Lanka. The Committee therefore concludes that the removal of the complainant to Sri Lanka would constitute a breach of article 3 of the Convention.

11. The Committee is of the view that the State party has an obligation to refrain from forcibly returning the author to Sri Lanka or to any other country where he runs a real risk of being expelled or returned to Sri Lanka. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken response to the present decision.

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[26] See, inter alia, Committee against Torture, communications No. 177/2001, *H.M.H.I. v. Australia*, decision adopted on 1 May 2002, para. 6.4; No. 218/2002, *Chorlango v. Sweden*, decision adopted on 22 November 2004, para. 5.2.

[27] See Committee against Torture, communications No. 379/2009, *Bakatu-Bia v. Sweden*, decision adopted on 3 June 2011, para. 10.6; No. 322/2007, *Njamba and Balikosa v. Sweden*, decision adopted on 14 May 2010, para. 9.5; also general comment No. 2 (2008), para. 18.

[28] See CAT/C/LKA/CO/3-4, para. 6.

[29] See CAT/C/GBR/CO/5, para. 20.

Communication No. 402/2009: *Abdelmalek v. Algeria*

Submitted by:	Nouar Abdelmalek (represented by Philip Grant of Track Impunity Always (TRIAL) – Swiss Association against Impunity)
Alleged victim:	Nouar Abdelmalek
State party:	Algeria
Date of complaint:	17 July 2009 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 23 May 2014,

Having concluded its consideration of complaint No. 402/2009, submitted to the Committee against Torture on behalf of Mr. Nouar Abdelmalek under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1. The complainant, Nouar Abdelmalek, is an Algerian citizen who was born on 18 July 1972. He states that he is the victim of a violation by Algeria of his rights under articles 1, 2 (para. 1), 6, 7, 11, 12, 13, 14 and 15, and, alternatively, article 16, of the Convention against Torture.[1] The complainant is represented by Philip Grant of TRIAL (Track Impunity Always) – Swiss Association against Impunity.

Facts as submitted by the complainant

Complainant's first and second arrests

2.1 The complainant entered the Algerian Army in the month of August 1991. In the context of widespread violence in Algeria during the 1990s, he refused, on a number of occasions, to participate in missions that troubled his conscience. In 1994, the complainant, then Chief of Service in the office of the Political Commissioner, did not want to participate in a mission, led by the counter-terrorism brigade, into villages in the Boumerdès region, because he was aware that citizens were abused and massacred during those missions. In order to avoid participating, he obtained a medical certificate. Nevertheless, by the time of his return on 7 May 1994, a wanted-person notice had been issued for desertion, and the complainant was placed in detention in the Reghaïa barracks. Though subsequently released by the prosecutor of the Blida military court on presentation of a copy of his medical certificate, he was given a suspended sentence of 3 months' imprisonment for desertion on 20 November 1994.

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[1] Algeria ratified the Convention and made the declaration under article 22 on 12 September 1989.

2.2 In May 1997, one night while on duty at the Reghaïa barracks, the complainant refused to take part in a torture session, and he left the barracks the next day. On the advice of an officer who was his friend, and who told him that matters had been taken care of, he returned to the barracks two days later. After resuming his post, he received a telephone call from his superior, a colonel, who told him that he was granting him leave. He then left the barracks and went to stay with his family in Tébessa. Having returned from his leave on the evening of 31 May, he was arrested the next day by military officers and detained in the Blida military prison. He was prosecuted for disobedience, for writing newspaper articles without authorization, and for desertion. Only the last of these charges was upheld by the Blida military court, which sentenced him to 2 months' imprisonment on 23 June 1997. Since the suspension granted in 1994 had been revoked, the complainant spent 5 months in detention and was not released until 31 October 1997. The complainant then resumed his post as Chief of Service in the office of the Political Commissioner at the Reghaïa barracks.

2.3 In 1998, in the course of his duties, the complainant drafted a report requested by the Ministry of Defence on, among other things, the recruitment of young Islamists in Afghanistan, and in which he implicated the Minister for Small and Medium-Sized Enterprises and future Chief of the MSP (Movement for a Society of Peace or HMS (*Harakat Mujtama` al-Silm*)) Islamic Party, Bouguerra Soltani. As a result of this report, the complainant was placed on "convalescent leave" for "administrative reasons" for three times 29 days, and then on "indefinite leave", until further notice. He was unable to obtain an explanation from the personnel office of the Ministry. His pay was stopped in 1999, and he learned that he was considered to be a deserter. During the period of "indefinite leave", the complainant wrote articles for various Algerian newspapers, under pseudonyms when they were of a political nature.

The complainant's third arrest

2.4 Since he could no longer work with the Army or write freely, and fearing for his safety, the complainant decided to leave Algeria, and acquired false identity papers. On 12 April 2001, as he was attempting to leave the country by crossing the border between Algeria and Tunisia, he was arrested by the border police at the Bouchebka border post. He was then turned over to the police at the Tébessa *wilaya* (prefecture) where he was questioned and then transferred to the Intelligence and Security Department (DRS) of the Tébessa *wilaya*, where he was questioned again. The next day, the complainant was handed over to the DRS eastern region services, and then taken in a car, hooded, handcuffed, and unable to see the faces of his escort, from Tébessa to Constantine. On arrival, he was placed in a cell alone.[2] He was then subjected to acts of torture, including the "rag technique" (forcing the victim to swallow a very large quantity of dirty water to the point of suffocation), beatings, electric shocks to sensitive parts of his body, and suspension by his left foot for many hours on end. His right foot was pierced with a heavy-gauge nail or screwdriver and shards of glass. While he was hanging from the ceiling by his foot, cold water was poured over his body. The victim was blindfolded for all the time that these abuses were being inflicted. During the interrogations, he understood that his torturers did not only wish him to reveal who had provided him with false papers; they also feared that the complainant would make public, once he had abandoned Algerian territory, what he had seen in the Army. The torture consisting in hanging the victim by his foot was repeated for 15 days in a row. During the days following his transfer to Constantine, the torturers submerged his head in water to the point of asphyxiation and bent his leg violently, causing breaks requiring a plaster cast, which was put on by a doctor who was called in for that purpose. The complainant was also deprived of sleep.

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[2] The complainant does not name the place of detention where he was allegedly tortured, although it can be deduced from his testimony that he was detained in the DRS centre in Constantine.

2.5 During his 15 days in secret detention (from 13 to 27 April 2001), between torture sessions the complainant was held in a cell approximately 1 square metre in area and approximately 1.2 metres high, situated near the torture chamber, without a window, and lit day and night by a fluorescent tube. He could not lie down full length or stand up; he was naked, handcuffed with his hands behind his back day and night, and he slept on the floor. He was given water and a piece of bread twice daily, and his handcuffs were not removed to allow him to eat. He only asked to leave his cell once a day, in order to avoid the blows and insults, and was forbidden to look at his jailers (he was told to look at the wall) when they opened the door. At night, since the doors on to the corridors (behind his cell door) were kept closed, there was no ventilation and he lacked sufficient air. On 27 April 2001, he was transferred back to Tébessa and turned over to the police, who took him directly to the Tébessa hospital, where he was placed in the wing reserved for prisoners. A prosecutor from the court of Tébessa paid him a visit several days after his arrival in the hospital. The complainant informed him of the torture inflicted on him, but the prosecutor was not particularly interested. The meeting was brief.

2.6 In late May 2001, he was transferred to the Tébessa prison infirmary, and in late June of that year, placed in regular detention, sharing a cell with other prisoners. Between the visit from the Tébessa prosecutor in the hospital and his placement in regular detention, the complainant wrote twice to the prosecutor general of Tébessa to complain about the torture inflicted on him, with no result.

2.7 In early July 2001, the complainant began a hunger strike, which lasted seven days, and which resulted in his placement in solitary confinement and led the prosecutor general to bring the case before an investigating judge at the court of Tébessa. This judge came to see the complainant, informing him that the allegations he had made were related to a matter of military security and therefore not within his jurisdiction. No further action was taken. The complainant wrote again to the prosecutor general of Tébessa, but the wardens told him that his letters were thrown away.

2.8 On 4 August 2001, during his trial for forgery, using forged documents and impersonation, the complainant again reported the torture inflicted on him, showed the marks on his body, and demanded an investigation. The court simply sentenced him to 1 year's imprisonment. The judge advised the complainant that the matter of torture required another proceeding, since the only matter before the court was forgery. The complainant again reported the acts of torture inflicted on him — again without result — before the appeal court during his hearing on 15 October 2001 (when his prison term was reduced to 10 months).

2.9 He was not released until 28 April 2002. He then went to the prosecutor general of Tébessa and asked for an investigation to be launched into the acts of torture inflicted on him. The prosecutor general told the complainant that he would be summoned; this never occurred. The next day he was threatened by two DRS officials, who told him that he would put himself and his family in grave danger if he persisted.

The complainant's fourth arrest and detention

2.10 At around 5 a.m. on 29 June 2005, officers from the Beni Messous brigade of the National Gendarmerie (Al Dark al-Watani), accompanied by plainclothes officers, cordoned off the complainant's home in Staoueli and searched it. Woken by a gun to his head, the complainant was taken to the headquarters of the Beni Messous gendarmerie, where he was tortured for two days. Naked, he was placed alternately in a cell in which the heat was on full, for two or three hours, and then in a cell where the air conditioning was on full, for the same length of time. He was kicked, and beaten with a metal bar, a pipe, and an electric cable. During those two days, he was deprived of sleep and sprayed with cold water to keep him awake. He was also subjected to the rag torture and electric shocks to his genitals and had a bar inserted into his anus. Once, he was taken to the toilets where he was forced to swallow toilet water. All the while he was undergoing these abuses, he was subjected to insults and threats (in particular, the threat of rape if he refused to sign confessions), and sexual references to his sister. The complainant recognized the person directing the torture sessions as a brigade commander, and family friend of the Minister of State, Bouguerra Soltani. The complainant was accused of plotting against the Minister, of having planted drugs that had been found in the Minister's armoured vehicle, and of ties to terrorism.

2.11 On the morning of 1 July 2005, DRS officials took the complainant to an unknown locale near the Chateauneuf Centre, the DRS headquarters and notorious as the biggest centre for torture and arbitrary detention in the country. The complainant was first taken to an underground cell. He was hung head down by his left foot, from a rope fastened to the ceiling, with his hands tied behind his back and a hood over his head. He was subjected to the rag technique, and electric shocks to his stomach and genitals. He was then tied to a bed, and dealt many blows to his spinal cord with the heel of an Army boot. The complainant was then taken to a larger cell where he was again tortured in the presence of senior Algerian officials, including Bouguerra Soltani, then Minister of State, and Colonel Ali Tounsi, then Director of National Security, who were egging the torturers on. The purpose was to extort from him the identity of detractors of the Minister of Small and Medium-Sized Enterprises within the Minister's own party and, under duress, the complainant cited names and signed confessions without knowing the contents of the documents presented to him. The Minister of State left with the documents signed by the complainant, telling him that he would never leave prison for the rest of his life. At the end of the day, the complainant was taken back to the Beni Messous gendarmerie, where he was again tortured for two days. The complainant signed more documents under duress, including blank police reports.

2.12 Having learned of his arrest, the complainant's cousin went to the Beni Messous gendarmerie on 1 July 2005. He too was arrested and tortured to make him testify against the complainant, and thrown into a cell in the gendarmerie. They were both brought before the court of Bir Mourad Raïs, in the suburbs of Algiers, on 4 July 2005. Having first been taken to a Government hospital for a medical check-up, the complainant had told the doctor about the torture inflicted on him and shown him the marks. The doctor had assured him that he would mention it, but the certificate drawn up later said nothing about torture. At the courthouse before the hearing, the complainant was beaten by a warrant officer and his staff. His head was thrown against a fire extinguisher, causing head wounds and bleeding, which were visible when he appeared before the court. The magistrate of the fifth chamber refused, however, to mention torture in the record and stuck to the gendarmes' version, which said that he had inflicted the head wounds on himself, voluntarily. The complainant was charged with terrorism and sent to El Harrach prison.

2.13 When he gave information about conditions in El Harrach prison to a journalist by cell phone, and it was reported in the press, the complainant was called to the prison infirmary on the evening of 12 October 2005, where he was awaited by five people calling themselves members of DRS. Questioned about the news leak, the complainant was again violently tortured, being subjected in particular to electric shock sessions, and then spent seven months in solitary confinement, forbidden to speak to anyone, in a 3 square metre cell with no window and lit by a bright fluorescent light day and night; and underfed. Despite many letters of protest to the prison warden and the Minister of Justice, it was not until May 2006 that he was moved to another cell, still in the solitary confinement wing but where there were other prisoners.

2.14 On 23 October 2005, the complainant was taken from his cell by three DRS officials and thrown into a car. His hands were tied behind his back and his face was covered once they were out of the prison gate. The complainant was driven to a secret detention centre, where he was stripped and placed naked in a cell, beaten with a heavy electrical cord, and slapped and insulted. The officers who subjected him to this treatment wanted him to inform them of the activities of the Islamic prisoners. When he refused, they hung him for hours from a ladder affixed to the wall. The complainant spent one day in this secret detention centre. He heard the cries of many people, who were probably, like him, victims of torture.

2.15 After 10 months of investigation, the complainant's trial was set for 10 May 2006, then adjourned to 24 May 2006, then to 7 and 21 June 2006. At each new hearing, there was a new judge, for unknown reasons. The complainant systematically reported the acts of torture to each trial judge, and each one replied either that torture did not exist in Algeria, or that the matter of torture could not be considered and must be taken up in another proceeding. The complainant was sentenced to 1 year in prison.

2.16 After his release from prison on 4 July 2006, the complainant was under constant surveillance by DRS, and received anonymous telephone calls telling him to "keep quiet" if he did not wish to spend his life in prison. In October 2006, the complainant published an interview on the Internet with a Tunisian journal describing the acts of torture inflicted on him, and implicating the Minister for Small and Medium-Sized Enterprises. After more threatening phone calls, he decided to leave Algeria. He managed to reach Tunisia using false papers, and then went to France, where, on 26 December 2006, he submitted an application for refugee status, which was granted to him on 31 March 2008. His family, which had remained in Algeria and had often received threatening phone calls during his detention in 2005, is still under surveillance. The acts of torture inflicted on the complainant have severely impaired his health, including an almost totally, and irreversibly, disabled left leg, a damaged spinal column, and pains in his kidneys and sides, from the beatings he received. In addition to the overall deterioration in his physical condition, the complainant suffers from violent headaches, nightmares, and recurrent insomnia.

The complaint

3.1 The complainant states that he is a victim of treatment that constitutes acts of torture within the meaning of article 1 of the Convention, having been subjected to severe pain and suffering (see the acts of torture described in the facts section), as attested by medical certificates drawn up in France, dated 6 March 2007 and 28 August 2008.[3] His suffering is such that in France he was granted disabled worker status with a 50 per cent work disablement.[4] Moreover, during the 15 days in which he was secretly detained in April 2001, he was subject to conditions of detention that, he argues, in themselves constitute a form of torture. The intent of the torturers was to subject the complainant to severe suffering for the purpose of obtaining information or confessions, and punishing, intimidating or coercing him for his supposed political affiliations. It is also incontrovertible that his sufferings were inflicted by public officials. The perpetrators of these acts were, in fact, members of the National Gendarmerie and DRS, acting in an official capacity. A minister of the Government of the Republic personally supervised one of his torture sessions and encouraged it. These acts were orchestrated by a number of public authorities (security, military, prison, judiciary and executive).

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[3] The medical certificates are annexed to the complaint.

[4] A medical certificate dated 26 May 2008 was prepared at the request of the complainant, in support of his application to be recognized as a disabled worker in France; see annex 25 of the initial communication.

3.2 The complainant also claims to be the victim of violations of article 2 (para. 1), and of articles 6, 7, 11, 12, 13, 14 and 15, read in conjunction with article 1.

3.3 With regard to article 2, paragraph 1, the complainant alleges that the State party has not taken the necessary steps to prevent torture. To begin with, it is clear that the State party continues to fail in its duty to seriously investigate or prosecute the great majority of serious crimes, including crimes of torture perpetrated since 1992. Moreover, order No. 06-01 implementing the Charter for Peace and National Reconciliation, an order which prohibits accusations against members of the Algerian security forces for serious crimes committed during the period known as the "national tragedy", sets out heavy prison sentences for anyone who makes such accusations. Although that order pertains only to acts committed during the national tragedy, it has effects beyond that period, since it sends a clear message concerning the institutional impunity of the security forces. Furthermore, Algerian law contains no provisions that prohibit using confessions or statements extorted under torture as evidence, and therefore the security forces are not deterred from using those methods. Article 51 of the Algerian Code of Criminal Procedure also provides that a person may be legally held in custody for a period of 12 days incommunicado, without contact with the family, a lawyer or an independent doctor.[5] The complainant therefore considers that the State party continues to fail to take the necessary measures to prevent such violations as torture, of which he has been a victim.

3.4 The complainant argues that the State party continues to violate article 11 of the Convention, by providing no supervision over pretrial detention or over the interrogations to which detainees are subjected. Although under the law police custody is limited to a period of 12 days, in practice that period is extended. The right to the assistance of counsel during detention is not guaranteed under Algerian law. The complainant also challenges the exclusive power of DRS, the authority in charge of a number of temporary holding places lacking effective supervision, which leads to abuses such as the ones he experienced. He also objects to the lack of a national registry of detained persons in Algeria. The complainant notes that, on one occasion, he was severely beaten just prior to appearing before the judge, who registered no reaction whatever, which demonstrates that the system for review is ineffective, in violation of article 11 of the Convention.

3.5 The complainant also considers that the State party has violated article 12, read in conjunction with article 6 (para. 2) and article 7 (para. 1) of the Convention. Despite repeated complaints by the complainant about the acts of torture inflicted on him, the State party has not held a prompt and impartial investigation some eight years after the incidents described.[6] Although the alleged perpetrators of these acts of torture were in its territory, the State party did not promptly carry out a preliminary investigation, making it impossible to prosecute the persons implicated, in violation of article 12 read in conjunction with articles 6 and 7 of the Convention.

3.6 The State party has not given the complainant the least possibility of a prompt and impartial consideration of the alleged facts, thus contravening article 13 of the Convention. The complainant recalls that, in accordance with the Committee's jurisprudence, the State party is under the obligation to carry out an investigation, regardless of whether a formal complaint for acts of torture was lodged.[7]

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[5] The complainant invokes a report of the Collective of Families of the Disappeared in Algeria, "Alternative Report to the Human Rights Committee" (pp. 31–33), and an Amnesty International report, "Algeria: Briefing to the Committee against Torture", 17 April 2008, Index AI, MDE 28/001/2008.

[6] More than 12 years, at the time of the Committee's examination of the complaint.

3.7 The inaction of the public prosecutor's office in fact precludes any possibility of bringing a civil suit for damages because, pursuant to the Algerian Code of Criminal Procedure, a judgement in a civil proceeding is stayed for as long as ongoing criminal proceedings have not concluded. If it can be said that the criminal action was initiated in 2001, when, on the basis of the complainant's report, the prosecutor general of Tébessa referred his case to the investigating judge, in practice the complainant is denied any possible compensation, in violation of the terms of article 14 of the Convention. Moreover, article 15 of the Code of Civil Procedure requires, for the filing of a civil complaint, a set of conditions such as the name and address of those responsible for the abuses, which the complainant does not know. He considers that these obstacles also constitute a violation of article 14 of the Convention.

3.8 Despite the complainant's repeated complaints that acts of torture were inflicted on him, in particular at his hearing before the investigating judge on 4 July 2005, the statements and confessions obtained under torture remained in the complainant's case file and served as the basis for his conviction, in violation of article 15 of the Convention.

3.9 In the event that the Committee does not find a violation of article 1 of the Convention, the complainant considers that the treatment inflicted on him falls at the very least within the scope of article 16 of the Convention, and that therefore the Committee should find a violation of this provision alone as well as a violation of the aforementioned provisions read in conjunction with article 16 of the Convention.

3.10 As for domestic remedies, the complainant has systematically, and on every occasion, denounced these acts of torture before the competent Algerian authorities. In April 2001, he complained to the prosecutor of the Tébessa court, and then to the prosecutor general, the investigating judge, and the Tébessa court, both during the hearing in first instance and on appeal. He also denounced these acts of torture in June and July 2005 during his appearance before the investigating judge of the court of Bir Mourad Raïs on 4 July 2005, and then at every substantive hearing before that court. Complaints about these acts of torture have been lodged with seven judicial authorities in all, without result.

3.11 The complainant also invokes the lack of independence of the competent judicial authorities, which makes remedies ineffective, with no real prospects of success. In accordance with the Committee's jurisprudence, the complainant is not required to exhaust remedies that are unlikely to be effective. He also cites risks to his life and safety, and mentions the legal impossibility of bringing judicial proceedings following the adoption of order No. 06-01 of 27 February 2006 implementing the Charter for Peace and National Reconciliation, which prohibits any proceedings against Government officials for acts committed during the "national tragedy".

State party's observations on admissibility

4. On 1 December 2009, the State party contested the admissibility of the complaint, on the grounds that it did not meet the conditions laid down by the Committee's rules of procedure concerning the procedure for complaints. The State party gave no additional explanation as to the basis on which it was contesting the admissibility of the complaint.

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[7] The complainant refers to communication No. 6/1990, *Parot v. Spain*, decision adopted on 2 May 1995, para. 10.4, and communication No. 59/1996, *Blanco Abad v. Spain*, decision adopted on 14 May 1998, para. 8.6.

Additional information from the complainant

5.1 On 3 March 2010, the complainant observed that the State party had not substantiated its request that the Committee should find the complaint inadmissible. He therefore asked the Committee not to grant the State party's request and to pronounce on the admissibility of the communication as well as on its merits.

5.2 On 15 December 2010, the complainant informed the Committee that he wished to withdraw his complaint against the State party.

5.3 On 4 March 2011, the complainant's counsel noted that on the same day that the complainant informed him of his wish to withdraw his complaint, which was 15 December 2010, a representative of the Permanent Mission of Algeria to the United Nations Office in Geneva contacted the Committee secretariat for confirmation that the complainant had done so. Counsel indicated that the complainant had several reasons for withdrawing his complaint. Firstly, he had been pressured by members of his family who did not wish him to take action against the State party. The withdrawal of the request was also a response to the persistent demand of his father, who said it was an affront to the dignity of his country. Secondly, he had been pressured and threatened by Algerian opposition organizations and movements that had hacked into and were monitoring his electronic mail and his website.[8] Thirdly, the complainant had been the target of death threats but had not been able to determine who they had come from. On 8 November and 8 December 2010, the complainant informed the Toulouse police that he had received death threats by electronic mail via his website.

5.4 Although he expressed the desire to withdraw his complaint to the Committee, he also expressed a wish to proceed with his criminal complaint against the former Minister of State, Bouguerra Soltani, whom he accuses of having tortured him, and against whom he lodged a criminal complaint before the Swiss courts in October 2009, in application of the principle of universal jurisdiction.[9] The Minister managed to flee before the police of the canton of Fribourg could arrange for a confrontation with the complainant.

5.5 Counsel informed the Committee that he had received an unsigned letter from the complainant, dated 21 October 2010, in which he mentioned his wish to withdraw his complaint because negotiations with the Algerian authorities had brought about the restoration of his moral and material rights, and the complaint was thus no longer necessary. Since it was not signed, counsel contacted the complainant, who denied having sent the letter.

5.6 On 31 March 2011, counsel informed the Committee that the complainant had decided to proceed with his case before it.[10] The complainant explained that his initial request to withdraw the complaint had arisen from problems with the Algerian judiciary, which had required proof of his wish to withdraw his complaint to the Committee before it could investigate a complaint against those involved in torturing him. After the withdrawal of the complaint had been requested, an Algerian lawyer was engaged to defend the complainant's interests before the Algerian courts. This lawyer was served a notification of the decision by the investigating judge,[11] who rejected his petition without explanation. Under the circumstances, the complainant wished the Committee to examine his complaint against Algeria.

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[8] www.anouarmalek.com.

[9] The complainant had filed the complaint in Switzerland, because the Minister was then on Swiss territory.

[10] Counsel provided a letter dated 8 March 2011 and signed by the complainant to this effect.

[11] The complainant does not identify the investigating judge, the court or the district involved.

Additional information from the State party

6.1 By note verbale of 31 March 2011, the State party said that it was surprised at how the complainant's counsel was attempting to distort the information that had been communicated to him, in good faith, by the Committee secretariat regarding its contacts with the Permanent Mission of Algeria to the United Nations Office in Geneva. The State party categorically rejects those assertions, explaining that the Permanent Mission of Algeria had merely made contact with the Committee secretariat to verify information relayed to it on 17 December 2010 via the national electronic media, indicating that the complainant had withdrawn his complaint to the Committee on 15 December 2010. The State party notes that the Committee confirmed, on 17 December 2010, that it had received a request from the complainant to withdraw his complaint.

6.2 The State party adds that when it was informed about this letter, the Permanent Mission of Algeria requested a copy for the case file on this complaint and asked the usual questions about the next stage of the procedure. In reply, the Committee indicated that a copy would be forwarded after the usual consultations with the complainant's counsel. The Committee also informed the Permanent Mission of Algeria that the withdrawal of the complaint would not take effect until after the Committee had taken a formal decision to strike the case from the roster during its May 2011 session. On 10 January 2011, the Committee informed the Permanent Mission of Algeria that the complainant's counsel had not been informed of the request, and that it would therefore be necessary to consult him before confirming that the complaint had been withdrawn, and thus also before forwarding the complainant's letter dated 15 December 2010. The State party notes that a copy of the letter has still not been sent. The State party insists that the Committee should verify the sequence of events, and that the complainant's counsel should not question its good faith, or that of its diplomatic representatives, in this matter.[12]

6.3 By note verbale of 22 October 2013, the State party informed the Committee that its observations would be submitted as soon as they were complete. The Committee had planned to consider the complainant's case in the absence of observations from the State party at its fifty-first session, which took place from 28 October to 22 November 2013. In view of the note verbale of 22 October 2013 from the State party, the Committee decided to consider, at its fifty-first session, only the admissibility of the communication.

State party's submission on the merits

7.1 On 21 March 2014, the State party submitted its observations on the merits of the communication. It recalled that the complainant is an ex-serviceman who was demobilized on 16 October 1998 after a lengthy period of desertion. He had then found himself embroiled in legal proceedings and a warrant for his arrest for theft, forgery, using forged documents and fraud was issued by the El Harrach court on 13 February 1999. On 2 September 2000 he was sentenced in absentia to 2 years in prison for these offences. On 2 December 2000 another warrant for his arrest was issued for writing bad cheques.

7.2 The State party claims that, on 30 June 2005, the complainant was arrested again for alleged involvement in a case of possession of drugs and fraud. In his statement he admitted placing drugs in a car that did not belong to him but in which he was a passenger; the drugs were found by the gendarmes on 21 May 2005. Evidence of his involvement in fraud offences was discovered in a search of his house. Proceedings were then taken against the complainant by the Bir Mourad Raïs prosecutor's office for fraud, false reporting of a crime and possession of drugs. On 21 June 2006 the Bir Mourad Raïs court acquitted him of the charges of false reporting of a crime and possession of drugs but found him guilty of fraud and sentenced him to one year's imprisonment. The sentence was upheld by the criminal division of the Algiers Court on 12 February 2007.

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[12] The complainant's letter dated 15 December 2010, and duly verified, was forwarded to the State party on 11 April 2011.

7.3 On 16 May 2010 the complainant filed a suit for damages with the chief investigating judge at the Bir Mourad Raïs court, against Bouguerra Soltani, the brother of the owner of the car where the drugs were found, who had implicated the complainant because of a dispute over a property sale. The complainant accused Bouguerra Soltani of abuse of power and using the apparatus of State for personal ends, to extract a confession from the complainant by torture, on the basis of which he was convicted. On 2 September 2010, the investigating judge rejected the suit on the grounds of non-payment of the surety required under the Code of Criminal Procedure when bringing suit for damages.

7.4 In the State party's view, the complainant is implicated in numerous crimes and he is alleging torture in order to cover himself and avoid responsibility for the criminal acts he has been involved in. The State party argues that the communication is based on allegations with no basis in law.

Additional information from the complainant

8.1 On 22 April 2014 the complainant submitted comments on the State party's observations on the merits. He notes that the State party took a very long time to inform the Committee of the order of 2 September 2010 dismissing his complaint of torture. He notes that the failure to pay surety on bringing the action for damages in no way justifies the failure to investigate matters of such gravity. The facts had been brought to the attention of the State party authorities, who should have launched an effective and impartial enquiry ex officio.

8.2 The complainant notes that the State party's reference to the proceedings against him has no bearing on the consideration of this communication, which concerns the torture he was subjected to in April 2001 and June 2005 and his various unlawful detentions. He also states that the State party simply denies that torture took place and gives no explanation in response to his allegations of torture, which he has substantiated in great detail in the communication.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 On 18 November 2013, at its fifty-first session, the Committee considered the admissibility of the complaint under article 22 of the Convention. It ascertained that the same matter had not been and was not being examined under another procedure of international investigation or settlement.

9.2 The State party argues that the complainant has withdrawn his complaint and that, contrary to counsel's assertions, it has in good faith attempted to establish whether he wished to proceed with it before the Committee. The Committee notes that, after having expressed a desire to withdraw his complaint against the State party on 15 December 2010, the complainant sent another letter to the Committee dated and signed 31 March 2011, confirming that he wished to proceed with his complaint before the Committee. The Committee notes that the authenticity of the letter of 31 March 2011 has at no time been contested by the State party. The Committee therefore considers that the communication is admissible under article 22, paragraph 1, of the Convention.

9.3 The Committee could not help but take note of the mysterious circumstances surrounding the complainant's requests to withdraw his complaint, and the contradictory reasons given by the complainant and his counsel to explain those requests, followed by his request to resume the procedure. It notes the State party's lack of cooperation regarding the submission of observations on the admissibility and merits of the case, despite the Committee's five reminders of 22 January 2010, 11 April 2011, 17 November 2011, 6 December 2012 and 26 July 2013. The Committee reaffirms that, within the framework of the procedure for individual communications set out in article 22, the State party is called on to cooperate with the Committee in all good faith and must refrain from taking any action that might constitute a hindrance. The Committee wishes to remind the State party of its obligations under article 22, and regrets that its correspondence has so far been limited to requests for confirmation as to whether the complainant has withdrawn his complaint, and that no comments have been submitted on the admissibility or merits of the case, which has hitherto prevented the Committee from elucidating the violations allegedly suffered by the complainant.

9.4 Although the State party has contested the admissibility of the complaint, it has provided no relevant information or explanation. The Committee has found no impediment to the admissibility of the complaint, and therefore declares it admissible. Accordingly, it requested that the State party submit its observations on the merits of the communication no later than 31 December 2013.

Lack of cooperation by the State party

10. On 6 October 2009, 22 January 2010, 11 April 2011, 17 November 2011, 6 December 2012, 26 July 2013 and 18 November 2013, the State party was asked to submit its observations on the admissibility and merits of the communication. In its note verbale of 22 October 2013, the State party announced that it would submit its observations once they had been finalized. Having found the complaint admissible on 18 November 2013, the Committee asked the State party to submit its comments no later than 31 December 2013. However, the State party's observations on the merits were not received until 21 March 2014. The Committee regrets that the State party has provided no information of substance on the admissibility of the complaint, merely disputing admissibility in a note verbale on 1 December 2009, and that it has made no substantive comments on the merits of the complainant's claims, saying only that he has been embroiled in legal problems. It recalls that the State party is obliged, under article 22 of the Convention, to submit to the Committee, in writing, explanations or statements clarifying the matter and to describe any remedies it may have taken. In the absence of a response from the State party, the Committee must give due weight to the complainant's claims that are sufficiently substantiated.[13]

Consideration of the merits

11.1 The Committee has considered the complaint in light of all information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention. Since the State party has offered no substantive observations on the merits, due weight must be given to the complainant's claims.

11.2 The Committee takes note of the complainant's claim that, during his periods of detention between 2001 and 2005, he was beaten repeatedly, subjected to the rag technique, given electric shocks, hung from the ceiling by his left foot, had his leg violently twisted until it broke, had his right foot pierced through, and had a bar inserted in his anus. It also takes note of the complainant's claim that he was held in secret detention for 15 days in April 2001, and on 1 July and 23 October 2005 in DRS centres; that, during his periods in detention, he was subjected to further ill-treatment and humiliation, and was beaten before his hearing on 4 July 2005; that he received no adequate medical treatment; and that, during all those years in detention, he was underfed, held in windowless cells and slept naked and handcuffed on the floor, unable to lie down full length.. The Committee notes that these claims are substantiated in medical certificates issued in France, dated 6 March 2007 and 28 August 2008. The Committee concludes that the alleged treatment constitutes severe pain and suffering within the meaning of article 1 of the Convention.

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[13] See communication No. 376/2009, *Bendib v. Algeria*, 8 November 2013.

11.3 The Committee takes note of the complainant's claim that his severe pain and suffering was inflicted by public officials, in this case, DRS officials and gendarmes, with the consent of high-ranking officials and the acquiescence of the judicial authorities. The Committee also notes that such treatment was inflicted for the purpose of obtaining statements and confessions from the complainant, and of punishing, intimidating and coercing him on the basis of his presumed political affiliation. The Committee notes that the State party has not refuted these allegations. The Committee considers that the acts described constitute torture within the meaning of article 1 of the Convention. The Committee also considers that the complainant's secret detention, and the humiliation and inhumane conditions of detention that accompanied the acts of torture inflicted on him, also constitute a violation of article 1 of the Convention.

11.4 Having found a violation of article 1, the Committee will not consider separately the claims of a violation of article 16 of the Convention.

11.5 The complainant claims a violation of article 2, paragraph 1, read in conjunction with article 1, inasmuch as the State party failed in its obligations to prevent and punish the acts of torture inflicted on the victim. The Committee takes note of the complainant's arguments that he has been a direct victim of flaws in law and in practice related to interrogations in Algeria, in particular that the law permits police custody for 12 days, with no contact with the outside, and in particular with the family, and no assistance from a lawyer or independent doctor; and that custody can be extended beyond that limit. The Committee also takes note of the complainant's claim that he was held in DRS premises not subject to any form of supervision by the competent judicial authorities. The Committee notes that the State party has not contested these claims. In this regard, the Committee recalls its most recent concluding observations addressed to the State party, in which it noted with concern that the legal period of custody can in practice be extended repeatedly, that the law does not guarantee the right to counsel while in custody, and that, in practice, the right of a detained person to have access to a doctor and to communicate with his or her family is not always respected.[14] In the light of the information before it, the Committee finds a violation of article 2, paragraph 1, read in conjunction with article 1 of the Convention.

11.6 Regarding article 11, the Committee takes note of the complainant's argument that he benefited from no legal safeguards during his interrogation. The Committee recalls that, in its recent concluding observations, it recommended that the State party establish a national registry of detained persons.[15] In view of the lack of information provided by the State party on these matters or on the arguments set out in its concluding observations, the Committee can only find that the State party has breached its obligations under article 11 of the Convention.

11.7 Regarding the alleged violation of article 12, read in conjunction with articles 6 and 7, and of article 13, of the Convention, the Committee takes note of the complainant's claim that, despite repeated complaints to the various judicial authorities, the State party has not conducted a prompt and impartial investigation more than 12 years after the events described. The Committee notes that the State party has not contested this allegation. The Committee recalls the obligation to carry out a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed.[16] In the absence of an explanation by the State party as to the reasons for the failure, more than a decade after the events, to conduct any investigation whatever into the acts of torture during various periods of detention, denounced on many occasions by the complainant, the Committee finds a violation of article 12 read alone and read in conjunction with articles 6 and 7 of the Convention. The Committee also considers that the State party has failed to fulfil its obligation under article 13 of the Convention to ensure the complainant's right to complain and to have his or her case promptly and impartially examined by the competent authorities.

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[14] Concluding observations of the Committee against Torture on the third periodic report of Algeria, adopted on 13 May 2008 (CAT/C/DZA/CO/3), para. 5.

[15] Ibid.

11.8 Regarding the alleged violation of article 14 of the Convention, the Committee notes the complainant's allegations that the State party has deprived him of any form of redress by failing to act on his complaint and by not immediately launching a public investigation. The Committee recalls that article 14 of the Convention recognizes not only the right to fair and adequate compensation, but also requires States parties to ensure that the victim of an act of torture obtains redress. The Committee considers that redress should cover all the harm suffered by the victim, including restitution, compensation, and measures to guarantee that there is no recurrence of the violations, always bearing in mind the circumstances of each case.[17] Given the lack of a prompt and impartial investigation despite the complainant's numerous claims that he was tortured, and despite marks showing on his face during his appearances in court, in particular on 4 July 2005, the Committee finds that the State party is also in breach of its obligations under article 14 of the Convention.

11.9 The Committee also takes note of the complainant's allegation that statements and confessions obtained under torture remained in his case file and served as the basis for his conviction. The Committee recalls that, in its concluding observations, it stated that it remained concerned about the lack of any provision in the State party's legislation clearly specifying that any statement that is proved to have been obtained under torture may not be cited as evidence in any proceedings.[18] In light of the information submitted by the complainant, as substantiated by information available to the Committee at the time of adoption of its concluding observations, the Committee finds a violation of article 15 of the Convention.

11.10 With regard to the procedure established in article 22, the Committee notes that, by a letter of 15 December 2010, the complainant informed the Committee that he wished to withdraw his complaint; that another letter from the complainant, of 21 October 2010, seems to have been sent to his counsel; that the two letters give different reasons for withdrawing the complaint; and that, on 31 March 2011, the complainant finally decided to proceed with his complaint before the Committee. The Committee cannot help but take note of the mysterious circumstances surrounding the complainant's requests to withdraw his complaint, followed by his request to resume the procedure, and the State party's lack of cooperation regarding the submission of observations on the admissibility and merits of the case. The Committee reaffirms that, within the framework of the procedure for individual communications set out in article 22, the State party is called on to cooperate with the Committee in all good faith and to refrain from taking any action that might constitute a hindrance. The Committee wishes to remind the State party of its obligations under article 22, and regrets that its correspondence was limited to requests for confirmation as to whether the complainant had withdrawn his complaint, and therefore shed no light on the violations suffered by the complainant.

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[16] Communication No. 269/2005, *Ali Ben Salem v. Tunisia*, decision adopted on 7 November 2007, para. 16.7.

[17] Ibid., para. 16.8.

[18] CAT/C/DZA/CO/3, para. 18.

12. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, finds that the facts before it discloses a violation of articles 1; 2 (para. 1), read in conjunction with article 1; 11; 12, read alone and in conjunction with articles 6 and 7; 13; 14; and 15 of the Convention.

13. Pursuant to rule 118, paragraph 5, of its rules of procedure (CAT/C/3/Rev.6), the Committee urges the State party to conduct an impartial investigation into the incidents in question, with a view to bringing to justice those responsible for the complainant's treatment, and to inform it, within 90 days of the date of the transmittal of this decision, of the steps it has taken in response to the views expressed above, including compensation for the complainant.

Communication No. 426/2010: *R.D. v. Switzerland*

Submitted by:	R.D. (represented by Tarig Hassan of Advokatur Kanonengasse)
Alleged victim:	The complainant
State party:	Switzerland
Date of complaint:	14 June 2010 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 8 November 2013,

Having concluded its consideration of communication No. 426/2010, submitted to the Committee against Torture by Tarig Hassan on behalf of R.D. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, her counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is R.D., an Ethiopian national born on 22 September 1984 and residing in Switzerland. She claims that her deportation to Ethiopia would constitute a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant is represented by counsel, Tarig Hassan of Advokatur Kanonengasse.

1.2 On 29 June 2010, the Rapporteur on new complaints and interim measures decided not to request interim measures from the State party to suspend the complainant's deportation to Ethiopia.

The facts as submitted by the complainant

2.1 The complainant is of Oromo ethnicity. Her father, G.D., was a member of the Oromo Liberation Front (OLF), a political organization in Ethiopia, and has been unaccounted for since his arrest in September 2005. According to the complainant, she and her family were harassed by the Ethiopian authorities on several occasions due to their presumed allegiance to the OLF. Soldiers searched the family's house to look for the complainant's brother, who had fled the country. An Ethiopian soldier tried to pressure the complainant to marry him in order to secure her family's safety.

2.2 After her mother's death in April 2007, the complainant fled Ethiopia with her brother's help. In September 2007, she travelled via Addis Ababa and Rome to Switzerland, where she filed an asylum claim on 13 September 2007. Since September

2008, the complainant has been an active member of the Swiss OLF section.[1] She has participated in various public events for the Oromo cause. Photos of her carrying the Oromo flag and photos of her at a meeting for the commemoration of martyrs have been published on the Internet.

2.3 On 10 July 2009, the Federal Office for Migration determined that it could not consider the merits of the complainant's asylum request, because the complainant had not provided a valid identification document. In a decision dated 26 February 2010, the Federal Administrative Tribunal rejected the complainant's appeal of the decision of the Federal Office for Migration.

2.4 On 29 March 2010, the complainant filed a second asylum claim, in which she remained content with describing her political activities in Switzerland while also submitting a school certificate and a letter from a former member of the Ethiopian parliament who had known her father. By its decision dated 10 May 2010, the Federal Office for Migration dismissed the claim without assessing the merits.[2]

The complaint

3.1 The complainant asserts that Switzerland would violate her rights under article 3 of the Convention by forcibly deporting her to Ethiopia, where she would "be at a real risk of being subjected to state persecution and inhumane treatment" due both to her own active participation in Ethiopian dissident activities in Switzerland, and to her father's and brother's association or imputed association with the political opposition. The complainant states that she is at risk because the Government of Ethiopia outlawed the OLF in 1992, considers it a terrorist organization and routinely harasses, abducts and mistreats its supporters. The complainant argues that she has become a visible figure in the Oromo exile movement through continued and resolute activism; that she entertains close ties with prominent dissident figures and is a member of the OLF European section's executive council; that photos of her participating in OLF events and holding the Oromo flag have been published on the Internet; that the Ethiopian authorities have likely taken note of her because her father was arrested on account of his political activism and long-standing membership in the OLF, and her brother fled the country for fear of sharing the same fate; and that the Government of Ethiopia has, through its newly enacted anti-terrorism legislation, recently intensified its efforts to crack down on political opposition and monitor dissidents located abroad.[3] Government officials frequently torture suspected activists.[4] The complainant concludes that, considering "the political background of her family, her ethnicity, her own political activism and her long absence from Ethiopia, there is indeed a high risk that the complainant might be arrested, questioned and detained upon her arrival in Ethiopia".

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[1] On this issue, the complainant submits a letter issued by the OLF European office, dated 25 April 2010, stating that the complainant "has continued her political activities as an active member of OLF Executive Committee in Europe". (Complainant's enclosure 2.)

[2] In this second asylum decision, the Federal Office for Migration determined that the complainant did not fulfil the criteria to be considered a refugee and contested the credibility of her account. The Office considered the additional documentation provided by the complainant and found that her political commitment and militancy were superficial, such that her return to Ethiopia would not likely interest the Ethiopian authorities.

[3] The complainant cites Human Rights Watch, *One Hundred Ways of Putting Pressure* (2010). Available from www.hrw.org/en/node/89126/section7.

[4] The complainant cites the United States of America Department of State, 2009 Country Reports on Human Rights Practices: Ethiopia (March 2010); Amnesty International, *Ethiopia: Prisoners of Conscience on Trial for Treason: Opposition Party Leaders, Human Rights Defenders, and Journalists* (May 2006); Human Rights Watch, "Suppressing dissent: human rights abuses and political repression in Ethiopia's Oromia region" (9 May 2005).

3.2 By letter dated 9 September 2010, the complainant submitted a psychologist's medical report stating that she is undergoing psychological treatment in Switzerland due to severe depression. The complainant further asserts that "her current mental condition is, inter alia, a product of the traumatizing experiences she was confronted with in her home country".

3.3 The complainant considers that she has exhausted domestic legal remedies. She filed an appeal of the decision by which the Federal Office for Migration denied the second asylum claim on 14 May 2010, and on 4 June 2010, the Federal Administrative Tribunal rejected the appeal.[5] The complainant was ordered to leave Switzerland; but at the time of submission of the present communication, her deportation date had not been set.

State party's observations on admissibility and on the merits

4.1 On 23 November 2010, the State party submitted its observations on the merits of the communication. The State party recalls the facts of the complaint and notes the complainant's argument that she would run a personal, real and serious risk of being subjected to torture if returned to Ethiopia, because of her political activities with the OLF. The State party considers that the complainant does not present any new elements that would call into question the decisions of the Swiss asylum authorities, which were made following a detailed examination of the case, but rather disputes the assessment of the facts and evidence by them. The State party maintains that the deportation of the complainant to Ethiopia would not constitute a violation of the Convention by Switzerland.

4.2 The State party considers that, according to article 3 of the Convention, State parties are prohibited from expelling, returning or extraditing a person to another State where there exist substantial grounds for believing that he or she would be subjected to torture. To determine the existence of such grounds, the competent authorities must take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.[6] Such a pattern is not in itself a sufficient basis for concluding that an individual might be subjected to torture upon his or her return to his or her country. To benefit from the protection under article 3, an applicant should show that he or she runs a "foreseeable, real and personal" risk of torture.

4.3 The State party considers that the facts of the complainant are insufficient and contain contradictory testimony on the alleged harassment she received by the Ethiopian authorities. She does not provide details of the harassment, and her complaint is inconsistent with the declarations she made at her first Federal Office for Migration hearing, when she stated that she had never been charged, detained or arrested by the Ethiopian authorities, and never personally experienced difficulties with either State authorities or private individuals. In her complaint, she stated that, beginning in November 2005, soldiers regularly came to her home to inquire about her brother. However, during the first Federal Office for Migration hearing, she stated that after the death of her mother, she left her home to stay with her brother's fiancée and did not experience any problems.

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[5] In its decision, the Federal Administrative Tribunal cast doubt upon the new documents produced by the complainant. It noted, for example, that the undated declaration from the Oromo Parliamentarians Council, purporting to confirm the 2005 arrest of the complainant's father, contained a section with numerous spelling and syntax errors, and did not state the name of the secretary who allegedly signed it. The declaration of Abiyot Shiferaw, a member of the federal Ethiopian parliament, lacked probative value because it stated that the complainant's father was arrested in 2006, and not, as the complainant had alleged, in 2005. The additional photographs presented by the complainant did not reveal any circumstances that would establish a risk of State persecution directed at the complainant.

[6] The State party refers to the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22 (*Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44 and Corr.1), annex IX), paras. 6 and 8, and the Committee's jurisprudence in communications No. 94/1997, *K.N. v. Switzerland*, Views adopted on 19 May 1998, paras. 10.2 and 10.5, and No. 100/1997, *J.U.A. v. Switzerland*, Views adopted on 10 November 1998, paras. 6.3 and 6.5.

4.4 The State party takes the view that suspected OLF affiliates may run a risk of persecution in Ethiopia. Expatriates who are active opponents of the Ethiopian regime may very well risk being identified and persecuted upon their return, even if the Government appears to lack the means to conduct systematic surveillance of political opponents abroad. Nevertheless, the State party submits that it is implausible that the Ethiopian authorities have taken note of the complainant's activities (either in Ethiopia or abroad). In the instant proceeding, the complainant does not assert that she was politically active in Ethiopia, and her prior testimony on this issue indicated that her ONEG[7] membership card was automatically issued due to her father's membership in the party. Moreover, the documents she produced do not demonstrate that she has participated in any activities in favour of a political position in Switzerland. In its second decision, the Federal Administrative Tribunal noted the doubtful authenticity and veracity of the letters provided by the Oromo Parliamentarians Council (OPC) and Mr. Shiferaw. Specifically, the Tribunal noted that the letter from Mr. Shiferaw (dated 11 March 2010) stated that the arrest of the complainant's father occurred in 2006 and not, as the complainant had claimed, in 2005. Moreover, the signature on the letter did not match the signature on the undated OPC statement, which was also allegedly signed by Mr. Shiferaw. The Tribunal further noted that the OPC statement exhibited many spelling and syntax errors in the section discussing the personal situation of the complainant, contrary to the rest of the statement, which reproduced the information contained on the OPC website. The OPC statement did not feature the name of the secretary supposed to have signed it. It further erroneously stated that the Swiss authorities had rejected the complainant's asylum application on the ground that Ethiopia is a democratic country. The State party further considers that the Ethiopian authorities do not target persons of Oromo ethnicity generally, but rather focus on high-profile individuals who, for example, participate in activities that could represent a danger to the Ethiopian regime. The State party considers that the complainant does not present such a profile; the photographs and documents she produced do not establish a risk of persecution should she return to Ethiopia.

Complainant's comments on the State party's submission

5.1 By letter dated 7 February 2011, the complainant submitted her comments on the observations of the State party. As a preliminary matter, she emphasizes that the Federal Office for Migration did not technically "reject" her first asylum claim, because it did not consider the merits of the case.

5.2 The complainant reiterates that she was harassed in Ethiopia and states that she has been consistent in her allegations on this issue. She submits that she never claimed to have been politically active in Ethiopia, but maintains that she was targeted due to her father's political activities. The complainant argues that her father's activism is corroborated by Mr. Shiferaw's statement, and that her allegation that the Government of Ethiopia closely monitors and pursues opponents living abroad is substantiated by a recent report on Djibouti published by the Human Rights League of the Horn of Africa.[8] The complainant states that the Government's crackdown on Oromo opposition is targeting more than just the party elite,[9] and the complainant is "one of the leading figures of the [OLF] movement in Switzerland". According to the complainant, a simple consultation of well-known dissident websites, such as the Oromia Times, would reveal the complainant's activism to the Ethiopian authorities. The complainant therefore claims to face a "real, imminent, and personal risk of being subjected to treatment contrary to the Convention" if returned to Ethiopia.

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[7] The complainant explained at her asylum hearing on 13 November 2007 that ONEG and OLF are the same entity.

5.3 The complainant provides a first-person statement of her OLF activities in Switzerland. She asserts that the OLF is a political organization whose objective is to struggle for self-determination of the Oromo people after a century of repression by Ethiopian rulers. The complainant states that between 2008 and 2009, her role in the OLF consisted of: participating in monthly contribution and fundraising activities; participating in monthly meetings; promoting Oromo cultural activities, displaying Oromo identity and celebrating Oromo national festivals; actively participating in the commemoration of Oromo Martyrs' Day; and preparing Oromo national food for fundraising purposes. In 2010, she was elected as an executive committee member of OLF Switzerland, and in this role she engages in: organizing the Oromo diaspora "according to gender, age, and profession to enhance their participation for the struggle of Oromo politics"; teaching the Oromo language; inculcating OLF ideological hegemony among Oromos in Switzerland; informing the Oromo diaspora about the false propaganda of the Government of Ethiopia; and writing the monthly reports of the organization.

Complainant's additional submission

6.1 On 19 September 2013, the complainant made a further submission which included a medical report, a medical certificate, a letter from the Oromo Community Switzerland (OCS), and the complainant's OCS membership card. The card, issued on 1 August 2012, states that the complainant has been an OCS member since 2008. The letter, dated 9 September 2013, states that the purpose of OCS is to promote Oromo culture and language within the diaspora and Switzerland. The letter also states that the complainant was "victimized and brutally mistreated by the Ethiopia government security forces". The letter does not specify the basis for this statement. The medical certificate states that the complainant has, since 2 May 2012, required regular medical treatment for a chronic inflammatory disease of the spine and pelvis. The separate medical report, dated 26 April 2013, states that the complainant suffers from recurrent depressive disorder, and that any further stress risks aggravating her condition. A second medical report by the same psychologist, issued on 9 September 2013 and requested by the Federal Office for Migration, provides a favourable mid-term prognosis for the complainant but states that the prognosis would be unfavourable should the complainant return to Ethiopia, due to the weak medical system in Ethiopia as well as the complainant's status as a single woman.

State party's comments on the complainant's additional submission

7.1 On 10 October 2013, the State party submitted a response to the complainant's additional submission. The State party considers that the complainant has not furnished any information regarding her claimed political activities in Switzerland. The State party further notes the discrepancy between the dates of birth stated on the OCS letter and the OCS membership card. The State party also takes the view that the medical certificate and reports do not indicate that the complainant would be subject to treatment in violation of article 3 if returned to Ethiopia.

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[8] The complainant provides a copy of the report dated 12 January 2011. It describes the disappearance of nine Ethiopian Oromo refugees after their arrest in Djibouti by members of the Djibouti forces who were allegedly supported by Ethiopian security agents.

[9] The complainant cites Country of Origin Research and Information (CORI), "CORI country report: Ethiopia" (January 2010), p. 31.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee against Torture must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

8.2 The Committee recalls that, in accordance with article 22, paragraph 5 (b), of the Convention, it shall not consider any communications from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that in the instant case the State party concedes that the complainant has exhausted all available domestic remedies.

8.3 The Committee considers that the complaint raises substantive issues under article 3 of the Convention, and that these issues should be examined on the merits. As the Committee finds no obstacles to admissibility, it declares the communication admissible.

Consideration of the merits

9.1 In accordance with article 22, paragraph 4, of the Convention, the Committee has considered the present communication in the light of all information made available to it by the parties concerned.

9.2 The issue before the Committee is whether the removal of the complainant to Ethiopia would violate the State party's obligation under article 3 of the Convention not to expel or to return (*refouler*) a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Ethiopia. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk.[10]

9.3 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention, that "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion". While the risk does not have to meet the test of being

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[10] Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

"highly probable" (para. 6), it must be personal and present. In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal.[11] While under the terms of its general comment the Committee is free to assess the facts on the basis of the full set of circumstances in every case, it recalls that it is not a judicial or appellate body, and that it must give considerable weight to findings of fact that are made by organs of the State party concerned.[12] In this respect, the Committee notes that various authorities in the State party examined the facts and evidence that the complainant produced and also submitted to the Committee.

9.4 In assessing the risk of torture in the present case, the Committee notes the complainant's claims that her father was abducted in 2005 due to his OLF activities, and that her brother was sought by the Ethiopian authorities due to his presumed allegiance to the OLF. The Committee also takes note of the complainant's allegations that a soldier tried to pressure her to marry him in order to secure her family's safety, and that the authorities repeatedly visited her family home to interrogate her about her brother's whereabouts. The Committee further notes the complainant's submissions about her own involvement in the activities of the OLF. It also notes the State party's position in this regard, namely, that it considers that the complainant's activities within the OLF are not eminently political in nature and would not be of interest to the Ethiopian authorities. The Committee observes the State party's contention that the documents furnished by the complainant to substantiate her involvement in the OLF "demonstrate neither the author's political commitment to an opposition movement, nor antigovernment militant activity".

9.5 The Committee takes note of the State party's observations concerning the complainant's lack of credibility. These concerns are based on factors including the presentation of contradictory information concerning the harassment suffered by the complainant in Ethiopia and the year in which her father's arrest occurred; the questionable authenticity/veracity of the corroborating statements she provided from the Oromo Parliamentarians Council and Mr. Shiferaw; and the complainant's inability to provide a valid means of identification or, in the alternative, an acceptable explanation for her inability to do so.

9.6 The Committee recalls its concluding observations of 2010, issued in connection with the initial report of Ethiopia, in which it states that it was "deeply concerned" about "numerous, ongoing and consistent allegations concerning the routine use of torture" by government agents against political dissidents and opposition party members, students, alleged terrorists and alleged supporters of violent separatist groups such as the OLF (CAT/C/ETH/CO/1, para. 10).[13] The Committee further takes note of the complainant's assertions regarding the attempts by the Government of Ethiopia to identify political dissidents living abroad. The Committee notes that the State party, while expressing disagreement regarding the extent of this surveillance, acknowledges that active expatriate dissidents risk persecution upon their return to Ethiopia. The Committee does not have information that this situation has improved following the change in leadership that occurred upon the death of Ethiopian Prime Minister Meles Zenawi in August 2012.

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[11] See, inter alia, communications No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November 2005, and No. 226/2003, *T.A. v. Sweden*, decision adopted on 6 May 2005.

[12] General comment No. 1, para. 9; communication No. 375/2009, *T.D. v. Switzerland*, decision adopted on 26 May 2011, para. 7.7.

[13] The Committee reported that such acts frequently occurred with the participation of, at the instigation of, or with the consent of commanding officers in police stations, detention centres, federal prisons, military bases, and unofficial or secret places of detention (CAT/C/ETH/CO/1, para. 10).

9.7 Nevertheless, in the Committee's view, the complainant has failed to substantiate her claims in relation to her political or other circumstances, in particular as regards whether they would be of such significance to attract the interest of the Ethiopian authorities at the current time, nor has she submitted any other credible evidence to demonstrate that she is at a personal risk of being tortured or otherwise subjected to ill-treatment if returned to Ethiopia. The Committee considers that the complainant's OLF activities in Switzerland do not appear to be markedly political in nature (fundraising, organization of and participation in cultural events, teaching the Oromo language), and the complainant has fallen short of substantiating her claims that she participated in high-profile ideological and political activities that would logically attract such attention of the Ethiopian authorities that would render her vulnerable to coercive and torturous treatment. The Committee further observes that the complainant has not submitted any evidence supporting her claims of having been harassed by the Ethiopian authorities prior to her arrival in Switzerland or establishing that the police or other authorities in Ethiopia have been looking for her since.[14] Nor has the complainant claimed, either before the Swiss asylum authorities or in her complaint to the Committee, that any charges have been brought against her under any domestic laws.[15] The Committee is concerned at the many reports of human rights violations, including the use of torture in Ethiopia,[16] but recalls that for the purposes of article 3 of the Convention the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he or she is returned.[17] In the light of the foregoing, the Committee finds that the information submitted by the complainant, including the low-level nature of her political activities in Switzerland, coupled with the nature and extent of inconsistencies in her accounts, is insufficient to establish her claim that she would personally be exposed to a substantial risk of being subjected to torture if returned to Ethiopia at the present time.

10. In the light of the above, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the deportation of the complainant to Ethiopia would not constitute a violation of article 3 of the Convention.

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[14] See *H.K. v. Switzerland*, communication No. 432/2010, decision adopted on 23 November 2012, para. 7.6; *T.D. v. Switzerland*, para. 7.9.

[15] *H.K. v. Switzerland*, para. 7.4, and *T.D. v. Switzerland*, para. 7.9.

[16] The Committee notes that Ethiopia is also a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

[17] See, inter alia, *S.M. v. Switzerland*, communication No. 406/2009, decision adopted on 23 November 2012, para. 7.4; *H.K. v. Switzerland*, para. 7.4; *T.D. v. Switzerland*, para. 7.9.

Communication No. 429/2010: *Sivagnanaratnam v. Denmark*

Submitted by:	Mallikathevi Sivagnanaratnam (represented by counsel, Niels-Erik Hansen)
Alleged victim:	The complainant
State party:	Denmark
Date of complaint:	18 August 2010 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 11 November 2013,

Having concluded its consideration of complaint No. 429/2010, submitted to the Committee against Torture by Mallikathevi Sivagnanaratnam under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is Mallikathevi Sivagnanaratnam, a national of Sri Lanka, born on 1 February 1957, at the time of the communication awaiting deportation from Denmark. She claims that the State party would violate article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment if it were to deport her. She is represented by counsel, Niels-Erik Hansen.

1.2 On 19 August 2010, in application of rule 108, paragraph 1, of its rules of procedure,[1] the Committee asked the State party not to expel the complainant to Sri Lanka while her complaint was being considered.

The facts as presented by the complainant

2.1 The complainant submits that if returned to Sri Lanka she will be subjected to torture because of her affiliation with the Liberation Tigers of Tamil Eelam. She is a Tamil herself. Although she was never a Tamil Tiger, her nephew was a prominent Tamil Tiger militant. He was killed in 1999 and the complainant organized his funeral and surrounding events in the town of Vanni, which was then under the control of the Liberation Tigers of Tamil Eelam. The complainant's nephew was declared a "martyr" and numerous Tamil Tigers came to the event. The funeral was widely advertised, including through distribution of flyers.

2.2 The complainant also submits that, if returned to Sri Lanka, she will be targeted by the authorities, also because her husband lent the Tamil Tigers a fishing boat; she and her husband sheltered militants in their house and served them food on many occasions.

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[1] This rule now appears as rule 114, paragraph 1, of the Committee's revised rules of procedure.

2.3 The complainant submits that in the past she has been arrested on several occasions by the police and beaten. On one occasion in 2003, after she moved to Karaveddy, which was under government control, she was detained for three days and beaten until all her teeth were knocked out of her mouth. She maintains that other members of her family were also targeted by the authorities and that her niece was killed in 2009.

2.4 The complainant submits that she obtained a passport through paying a bribe and eventually managed to flee to Denmark with the assistance of relatives who lived abroad and friends in Colombo.

2.5 The complainant arrived in Denmark on 11 October 2008 and sought asylum on 25February 2009. The Immigration Service rejected her application on 19 January 2010, because they did not find the account of the events that led to her seeking asylum coherent and credible. Following an appeal, the Refugee Board confirmed the decision of the Immigration Service on 19 May 2010 and the complainant was ordered to leave Denmark immediately. On an unspecified date in August 2010 the complainant was detained by the Danish police with the purpose of deporting her to Sri Lanka on 20 August 2010. The complainant claims that she has exhausted domestic remedies.

The complaint

3. The complainant contends that if deported to Sri Lanka she would face detention and torture, in violation of article 3 of the Convention.

State party's observations on admissibility and the merits

4.1 On 20 August 2010, the State party informed the Committee that the complainant's deadline for departure had been suspended while her complaint was under consideration by the Committee.

4.2 On 15 October 2010, the State party submitted that the complainant entered the country on 11 October 2008 on a visitor's visa, valid until 4 January 2009, granted to visit her daughter and other relatives living in Denmark. On 10 February 2009, the Danish Immigration Service refused her application for family reunification. On 25 February 2009, the complainant applied for asylum. On 29 January 2010, her application was rejected by the Immigration Service. On 19 May 2010, the Refugee Appeals Board upheld the decision of the Immigration Service refusing asylum.

4.3 The State party submits that the complainant was motivated to make her asylum request because her husband had assisted the Liberation Tigers of Tamil Eelam by lending them boats and engines and that she organized the funeral of her nephew, an active member of the Liberation Tigers of Tamil Eelam, who was killed in 1999 and declared a "martyr". She also claimed that the spouses of her nieces were members of the Liberation Tigers of Tamil Eelam, that one of her nieces had been killed by the army and that the Sri Lankan army was aware of her family connections and of her organizing the funeral, which became a big Tamil Tiger event. She also claimed that her husband and other family members were actively sought by the army in 2009, that the army had discovered that she had left the country and that based on the above facts they considered her to be a member of the Liberation Tigers of Tamil Eelam. The State party also submits that the complainant made conflicting statements in relation to her being detained and tortured by the authorities in 2003.[2] The State party points out that the complainant only disclosed that she had had problems with the authorities in Colombo in November 2009, while her initial application for asylum was made in May 2009, and that according to her she was not sought individually, but because the authorities persecuted all Tamils. The State party further points out numerous inconsistencies in her statements regarding the problems she had with the authorities while in Colombo, the reasons why she was allowed to leave the country to go to Canada in 2007 and the reasons why she feared to return to Sri Lanka in 2009.

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[2] The State party points out that the complainant had omitted the incident in her initial asylum application, that she later stated that she had forgotten to write about it and amended her statement

4.4 The State party further reiterates the content of the decision of the Refugee Appeals Board and the reasons why the complainant's asylum request was rejected, namely that her activities in Sri Lanka were limited and took place many years ago; the "extended information" that she had given in her different statements regarding the instances of her detention and torture; that she was able to freely leave the country and return; that she had not applied for asylum when she visited Canada in 2007; that she applied for asylum in Denmark only after her application for family reunification had been rejected. Accordingly the Board did not consider that she would be exposed to a risk of persecution if she returned to Sri Lanka.

4.5 The State party further describes the structure and the functioning of the Refugee Appeals Board, namely that it comprises a chairman and a deputy chairmen, who are judges, and other members, who must be attorneys or serve with the Ministry of Social Affairs, Children and Integration and that they are appointed by the Executive Committee of the Board. According to the Aliens Act, the members are independent and cannot seek directions from the appointing or nominating authority. Usually the Board assigns a counsel to the applicant and the counsel is allowed to meet with the applicant and to study the case file. Proceedings before the Board are oral; the hearing is attended by an interpreter and a representative of the Immigration Service. The applicant is allowed to make a statement and answer questions; the counsel and the representative of the Immigration Service can make concluding comments and then the applicant can make a final statement. The Board issues a written decision, which is not subject to judicial review. Decisions of the Immigration Service refusing asylum are brought before the Board and the appeal suspends the return of the individual to his country.

4.6 The State party notes that pursuant to section 7, paragraph 1, of the Aliens Act, a residence permit can be granted to an alien if the person falls within the provisions of the Convention relating to the Status of Refugees. For this purpose, article 1.A of that Convention has been incorporated into Danish law. Although this article does not mention torture as one of the grounds justifying asylum, it may be an element of persecution. Accordingly, a residence permit can be granted in cases where it is found that the asylum seeker has been subjected to torture before coming to the State party, and where his/her substantial fear resulting from the outrages is considered well-founded. This permit is granted even if a possible return is not considered to entail any risk of further persecution. Likewise, pursuant to section 7, paragraph 2, of the Aliens Act, a residence permit can be issued to an alien upon application if the alien risks the death penalty or being subjected to torture, inhuman or degrading treatment or punishment in case of return to his/her country of origin. In practice, the Refugee Appeals Board considers that these conditions are met if there are specific and individual factors rendering it probable that the person will be exposed to a real risk.

4.7 Decisions of the Refugee Appeals Board are based on an individual and specific assessment of the case. The asylum seeker's statements regarding the motive for seeking asylum are assessed in the light of all relevant evidence, including general background

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concerning where she was when she was arrested and regarding the reasons for her release and other details.

material on the situation and conditions in the country of origin, in particular whether systematic gross, flagrant or mass violations of human rights occur. Background material is obtained from various sources, including country reports prepared by other Governments, and information available from the Office of the United Nations High Commissioner for Refugees (UNHCR) and prominent non-governmental organizations. In particular the State party refers to a UNHCR report dated 5 July 2010, which states that Sri Lankans originating from the north of the country are no longer in need of international protection under broader refugee criteria or complementary forms of protection solely on the basis of the risk of discriminatory harm and that there is no longer a need for group-based protection mechanisms or for a presumption of eligibility for Sri Lankans of Tamil ethnicity originating from the north of the country. The report also concludes that "at the time of writing the generally improved situation in Sri Lanka is still evolving".

4.8 In cases where torture is invoked as part of the basis for asylum, the Refugee Appeals Board may request that the asylum seeker be examined for signs of torture. The decision as to whether it is necessary to undertake a medical examination is made at a Board hearing and depends on the circumstances of the specific case, such as the credibility of the asylum seeker's statement about torture.

4.9 The State party submits that it is the responsibility of the complainant to establish a prima facie case for the purpose of admissibility of the complaint under article 22 of the Convention. In the present complaint, it has not been established that there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to Sri Lanka. The complaint is manifestly unfounded and therefore it should be declared inadmissible.

4.10 The purpose of the complaint is to use the Committee as an appellate body to have the factual circumstances advocated in support of her claim of asylum reassessed by the Committee. The State party recalls the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention[3] and points out that the Committee should give considerable weight to findings of fact made by the State party concerned. In the present case, the complainant had the opportunity to present her views, both in writing and orally, with the assistance of legal counsel. Subsequently, the Refugee Appeals Board conducted a comprehensive and thorough examination of the evidence in the case. Therefore, it submits that the Committee must give considerable weight to the findings of the Board.

4.11 The State party submits that it was unnecessary to initiate an examination of the complainant for signs of torture, since her statements were not credible. It further states that article 3, paragraph 1, of the Convention requires that the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which she is to be returned and that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion, although it does not have to meet the test of being highly probable.[4] The existence of a consistent pattern of gross, flagrant or mass violation of human rights in a country does not, as such, constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his/her return to that country.[5]

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[3] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44 and Corr.1), annex IX.

[4] The State party refers inter alia to communications No. 270/2005 and 271/2005, *E.R.K. and Y.K. v. Sweden*, decision adopted on 30 April 2007, paras. 7.2 and 7.3; No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006, paras. 7.1 and 7.2; No. 180/2001, *F.F.Z. v. Denmark*, Views adopted on 30 April 2002, paras. 9 and 10; and No. 143/1999, *S.C. v. Denmark*, Views adopted on 10 May 2000, paras. 6.4 and 6.6. It also refers to the Committee's general comment No. 1.

4.12 The State party submits that the applicant has failed to establish a prima facie case for the purpose of admissibility of her communication under article 22 of the Convention and that the communication is therefore manifestly unfounded and should be declared inadmissible.

4.13 Should the Committee find the complaint admissible, the State party argues that the complainant has not established that her return to Sri Lanka would constitute a violation of article 3 of the Convention.

Complainant's comments on the State party's observations

5.1 On 3 January 2011, the complainant submitted that the information regarding the use of torture in the country of return was the first and most important issue at that stage. She argues that the State party has a duty to collect information about the use of torture. She points out, however, that the State Party in its submission has made a reference to a report issued in July 2010,[6] but that the assessment of her case by the authorities took place in 2009 and the final decision was taken by the Refugee Appeals Board in May 2010, two months before the report in question had been issued. She maintains that at the time the decision was taken, systematic, gross, flagrant and mass violations of human rights were taking place in Sri Lanka against Tamils from the north and that the UNHCR guidelines recommended that such individuals not be returned. She submits that the Board's decision was thus a clear-cut violation of the Convention, since according to UNHCR the risk of torture was too high. She further submits that, even though the situation might have improved after the decision had been taken by the Danish authorities, torture and human rights violations still took place against Tamils from the north and refers to a report by Amnesty International.[7] She maintains that if it had followed the UNHCR guidelines, the State party should have granted her protection status in 2009 and should have reassessed her case on an individual basis in 2010.

5.2 The complainant further submits that, according to section 7 (1) of the Aliens act, refugee status is granted in cases when an individual had been tortured and risks being subjected to torture in the future. In cases where an applicant has been tortured, but does not risk being tortured in future, the individual may still be granted a residence permit. The complainant further argues that it was the duty of the State party to establish whether she had been subjected to torture in the past, also in order to correctly assess her evidence, because torture victims often have difficulties talking about their experiences and may only talk about these when they feel very secure. She argues that the fact that she recounted the torture which she had suffered only at the interview with the Immigration Service, should not undermine her credibility. She maintains that in that instance she not only informed the authorities that she had been subjected to torture, but showed them scars on her body and demonstrated that she had no teeth in her mouth. She argues that at that point she should have been offered a form to sign authorizing a medical examination, which she maintains she was ready to do. Rather than doing that, the authorities chose to base their decision on a "credibility test" based on the written material and the interview.

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[5] The State party refers to communications No. 220/2002, *R.D. v. Sweden*, decision adopted on 2 May 2005, para. 8.2; No. 245/2004, *S.S.S. v. Canada*, decision adopted on 16 November 2005, para. 8.3; *E.R.K. and Y.K. v. Sweden*, para. 7.2; and No. 286/2006, *M.R.A. v. Sweden*, decision adopted on 17 November 2006, para. 7.3.

[6] See para. 4.7 above.

[7] The complainant referred to the Amnesty International Annual Report 2010, pp. 301 to 303.

5.3 The complainant also argues that the Refugee Appeals Board failed to order a medical examination based on the exact same arguments as the Immigration Service. She submits, however, that the authorities, in assessing the credibility of asylum seekers, rely on the forms the latter fill out when applying and on their statements during the interview with the Immigration Service. She maintains that in her case she filled out the respective form in her native language and that it was subsequently translated, but during the Board hearing at least one mistake in the translation was detected and there could have been more. She also reiterates that torture victims often have difficulties recounting their experiences. She maintains that the Immigration Service and the Refugee Board were obliged to conduct a medical examination to verify her account of having been tortured. She further submits that her statements were consistent during the entire process and that the fact that no medical examination of her scars and health condition was conducted deprived her of the opportunity to prove that she had suffered from torture.

5.4 The complainant further makes reference to a case of the European Court of Human Rights, in which an applicant, who had scars on his body, was found to be in danger of torture upon return, since the Court considered it likely that the airport authorities would detain him, strip search him, discover the scars and conclude that he was a Tamil Tiger.[8] She further submits that even though in her appeal to the Refugee Appeals Board she explicitly described the incident when she was detained and her teeth were knocked out of her mouth, the decision of the Board does not mention it.

5.5 The complainant reiterates that if she is forcibly returned to Sri Lanka, the Danish authorities would be in violation of article 3, paragraph 1 of the Convention, since she would be at risk of torture and in violation of article 3, paragraph 2 of the Convention, since the authorities failed to investigate whether she had indeed been subjected to torture.

5.6 The complainant submits that she has established a prima facie case for the purposes of admissibility under article 22 of the Convention. She further submits that the decision to deport her is a violation of article 3 of the Convention, firstly because the general information regarding human rights in Sri Lanka, the UNHCR guidelines and the European Court of Human Rights jurisprudence clearly prove that no forced deportation of Tamils from the north of Sri Lanka should take place due to the risk of persecution or torture; and secondly, because in a case-by-case assessment of the complainant's claim, in order to establish if substantial grounds to fear torture existed, the authorities should have allowed for an examination of the claimant.

State party's further observations

6.1 On 30 May 2011, the State party submitted with regard to the relevance of the UNHCR eligibility guidelines, that the latter are of a general nature and do not contain any specific assessment of the personal circumstances of the individual asylum seeker, whereas the Refugee Appeals Board decides on individual cases. The Board applies the Convention and other international human rights treaties based on the personal circumstances of the applicant, together with all background information available on the conditions in the country. The UNHCR guidelines thus have no decisive influence in themselves. Nevertheless, the State party maintains that recommendations and background material from UNHCR formed a crucial element of the Board's processing of the case and were accorded material importance. The State party maintains that such understanding is in line with the views of the European Court.[9] It further refers to the Committee's own practice that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person cannot be considered to be in danger to be subjected to torture in his or her specific circumstances. It further points out that in the case of *N.A. v. the United Kingdom of Great Britain and Northern Ireland*, the European Court established that there was no general risk of treatment contrary to article 3 to all Tamils returning to Sri Lanka[10] and notes that the above decision was taken before the decision of the Board of 19 May 2010 in the complainant's case.

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[8] The complainant refers to the European Court of Human Rights case *N.A. v. U.K.*, application No. 25904/07, judgment of 17 July 2008. The author also refers to other Court cases where Tamils were found to be in danger of torture: *T.N. v. Denmark*, appl. No. 20594/08; *T.N. and S.N. v. Denmark*, appl. No. 36517/08; *S.S. and others v. Denmark*, appl. No. 54703/08; *P.K. v. Denmark*, appl. No. 54705/08; and *N.S. v. Denmark*, appl. No. 58359/08.

6.2 The State party further maintains that the complainant must establish that there are substantial grounds for believing that she would be in danger of torture were she to be expelled at present, namely at the time of the assessment of the case by the Committee. The State party maintains that the present case is clearly distinguishable from the case of *N.A. v. the United Kingdom*, since in that case the applicant had left Sri Lanka clandestinely after being arrested and detained by the army on six different occasions, on at least one occasion he had been ill-treated and scarred and he had been photographed and his fingerprints taken.

6.3 Regarding the complainant's allegation that there were translation errors in her application form, she had submitted previously to the authorities that there had been one error, namely the year of the death of her nephew had been translated mistakenly. The Board took that into consideration. No other typing mistakes or erroneous translation had been detected. In addition the complainant had sent a four-page letter to the Danish Immigration Service, giving a thorough account of her motive for asylum and therefore the State party considers it unlikely that she had tried to suppress information, but on the contrary had tried to adduce information to the case.

6.4 Regarding the torture examination, the State party refers to its previous observations, namely that the incident when she had been detained and beaten and her teeth were knocked out is a central element of her application and that the authorities found it unlikely that she had forgotten to mention it in her initial application, but only remembered about it in November 2009, more than six months later. The State party further reiterates the reasoning of the Board for rejecting the complainant's application (see paragraph 4.4 above).

Complainant's further information

7. On 20 July 2011, the complainant made reference to the Committee's jurisprudence in communication 91/1997, *A. v. Netherlands*, where the complainant also had scars from past torture and the Committee found that the State party had failed to explain why his claims were considered insufficiently substantial as to warrant a medical examination.[11] Similarly, the complainant in that case was not a member of a persecuted party, but only a supporter and the Committee found that in view of his past history of detention he could be

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[9] The State party made reference to the European Court cases *N.A. v. the United Kingdom*, judgment of 17 July 2008 and *F.H. v. Sweden*, appl. No. 32621/06, judgment of 20 January 2009.

[10] Ibid.

[11] Communication No. 91/1997, *A. v. Netherlands*, Views of 13 November 1998, para. 6.6.

tortured again.[12] The complainant further reiterates her argument that the Refugee Appeals Board should have ordered a medical examination. She maintains that, since in Denmark asylum seekers are not allowed to work she did not have the means to pay for a medical examination herself.

State party's further observations

8. On 21 October 2011, the State party submitted that the case referred to by the complainant, *A. v. Netherlands*, significantly differs from her case, since in that case the authorities did not dispute that the complainant had been tortured in the past. In the present case, the Refugee Appeals Board has not considered it a fact that the complainant was subjected to torture in her home country, based on her own statement. The State party reiterates that the deportation of the complainant to Sri Lanka would not be in violation of article 3 of the Convention.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 Before considering any complaint submitted in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

9.2 The Committee considers that the communication has been substantiated for purposes of admissibility, as the complainant has sufficiently elaborated the facts and the basis of the claim for a decision by the Committee. Accordingly, the Committee finds that no obstacles to the admissibility of the communication exist and thus declares it admissible.

Consideration of the merits

10.1 The Committee has considered the communication in the light of all the information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention.

10.2 The issue before the Committee is whether the expulsion of the complainant to Sri Lanka would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he/she would be in danger of being subjected to torture.

10.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Sri Lanka. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The Committee remains seriously concerned about the continued and consistent allegations of widespread use of torture and other cruel, inhuman or degrading treatment perpetrated by State actors, both the military and the police, which have continued in many parts of the country since the conflict ended in May 2009.[13] However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would return; additional grounds must be adduced to show that the individual concerned would be personally at risk.[14]

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[12] Ibid., para. 6.7.

[13] See CAT/C/LKA/CO/3-4, para. 6.

10.4 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention, that "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable", but it must be personal and present. In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal. The Committee recalls that under the terms of general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned, while at the same time it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

10.5 The Committee notes that the complainant claims to have been tortured in the past and that the State party should have ordered a medical examination to prove or disprove her claims. The Committee, however, notes that the responsible organs of the State party had thoroughly evaluated all the evidence presented by the complainant, found it to lack credibility and did not consider it necessary to order a medical examination. The Committee further notes that, even if it were to accept the claim that the complainant was subjected to torture in the past, the question is whether she currently runs a risk of torture if returned to Sri Lanka. It does not necessarily follow that, several years after the alleged events occurred, she would still currently be at risk of being subjected to torture if returned to her country of origin. The Committee has also noted the claim that the complainant would be tortured if deported to Sri Lanka on account of her perceived affiliation with the Liberation Tigers of Tamil Eelam. However, the complainant has not convinced the Committee that the authorities of the State party, which considered the case, did not conduct a proper investigation. In addition, the complainant did not present any evidence that the Sri Lanka authorities had been looking for her or have had any interest in her whereabouts in the recent past.

10.6 As regards the complainant's past activities, which date back predominantly to 1999, it is not clear that these activities were of such significance as to attract the interest of the authorities if the complainant were to be returned to Sri Lanka in 2010. The Committee recalls paragraph 5 of general comment No. 1, according to which the burden of presenting an arguable case lies with the author of a communication. In the Committee's opinion, the complainant has not discharged this burden of proof.

11. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the decision of the State party to return the complainant to Sri Lanka does not constitute a breach of article 3 of the Convention.

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[14] See communications No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006; No. 333/2007, *T.I. v. Canada*, decision adopted on 15 November 2010; and No. 344/2008, *A.M.A. v. Switzerland*, decision adopted on 12 November 2010.

Communication No. 434/2010: *Y.G.H. et al. v. Australia*

Submitted by:	Y.G.H. et al. (represented by Janet Castle)
Alleged victims:	The complainants
State party:	Australia
Date of complaint:	24 October 2010 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 14 November 2013,

Having concluded its consideration of complaint No. 434/2010, submitted to the Committee against Torture by Y.G.H. and wife X.L.Z. and their son D.H., under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainants, their counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The main complainant is Y.G.H. (the complainant), the other complainants are his wife X.L.Z. and their son D.H. (the complainants), nationals of China, born on 27 September 1955, 22 April 1957 and 7 March 1987, respectively. They currently reside in Australia. They claim that their return to China by Australia would violate articles 3 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. They are represented by Janet Castle.

1.2 Under former rule 108, paragraph 1, of its rules of procedure (now rule 114),[1] the Committee requested the State party, on 3 November 2010, to refrain from expelling the complainants to China while their complaint is under consideration by the Committee. The State party agreed to refrain temporarily from deporting the complainants.

Factual background

2.1 The main complainant, Y.G.H., originates from Longtian in Fujian Province of China, where he has been a member of the underground Quiets church since 1998. He allowed meetings of the church to be conducted in his store and was questioned by police in 2001. In 2003 he was detained for a week and fined. He claims he was forced to join a "study class" organized by the Government and sent to a detention camp, where he was subjected to both mental and physical abuse. He was again detained for almost a month in March 2004 and interrogated on several occasions before leaving China on 5 June 2004.

2.2 On 6 June 2004 the complainants arrived in Australia on visitors' visas. A few days after their arrival, the main complainant found out from his mother, who still lived in China, that two of his former employees had been arrested and that they had disclosed information about the complainant's role in the church and that he had been served with a summons to appear before a court due to his anti-governmental religious activities. On 23 June 2004, the complainant and his family applied for a protection visa. He claimed that he had a well-founded fear of persecution in China on account of his religion, given his involvement in the underground Christian church in China. On 28 June 2004, the application was refused by the Department of Immigration and Citizenship. On 2 November 2004, his appeal was refused by the Refugee Review Tribunal. On 7 November 2005, the Federal Magistrates Court upheld the decision. His second application to the Tribunal was refused on 20 February 2006 and his further appeal to the Federal Magistrates Court was refused on 13 September 2006 and thereafter also by the Federal Court of Australia on 21 February 2007. On 16 March 2007, he applied to the Minister for Immigration and Citizenship seeking a permanent protection visa for himself and his family, but this was refused on 22 March 2008. Thereafter, in 2008 and 2009, he, his counsel and other third persons, on behalf of him and his family, submitted several letters to the Minister with new information; however in all cases the main complainant was informed that his case would not be re-examined by the Minister, as the further requests in combination with the information known previously did not meet the specific guidelines for referral to the Minister. On an unspecified date in 2010, the complainant submitted to the immigration authorities a copy of the summons of 18 January 2010 of the Fuqing City People's Court and a copy of the detention notice of 2 February 2010 issued by the Public Security Bureau of Fuqing City.

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[1] Rules of procedure CAT/C/3/Rev. 5, dated 21 February 2011.

2.3 The State party authorities refused a protection visa to the complainants on the grounds, inter alia, that "year by year it was becoming easier for Christians to practise their beliefs, particularly in provinces (of the People's Republic of China) near the coast."[2] Despite the fact that the complainant claimed to be a key leader of the underground church, he was issued with a passport by the Chinese authorities without any obstacles in 2000 and could leave China on 5 June 2004 without any hindrance.[3] His claims that he was a key leader of the underground church were contradictory, as he only provided premises and some financial support; his statements were inconsistent; he could not provide any evidence to support, inter alia, the statement that he had been detained on two occasions (once for three weeks) such as an arrest warrant, detention order or document of release, or any medical documentation demonstrating that he had been subjected to ill-treatment while in detention. The underground home churches alone were estimated to have between 30 and 50 million members in China and the Refugee Review Tribunal was not able to satisfy itself that there was any reason to believe that there was a real risk that the complainant would experience serious harm amounting to persecution if returned to China.[4]

2.4 The main complainant submits that he continues to practise his faith in Australia. He also submits that his health has deteriorated during the last six years and he has been diagnosed with "major affective disorder, depressive type which amounted to dysmantia" due to his fear of being removed to China. He adds that he also suffers post-traumatic stress disorder, including insomnia, agitation and nightmares relating to his experience of political detention and torture when he was in China.

2.5 The complainant further notes that they should not be expelled because his wife is unfit to travel following a surgical intervention in February 2010 to remove an intrauterine device (IUD), which had been forcibly inserted in China and that he was also found by the Department of Immigration and Citizenship to be unfit to travel on psychiatric grounds.

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[2] Decision of the Department of Immigration and Citizenship, 28 June 2004.

[3] Ibid.

[4] Decision of the Refugee Review Tribunal, 2 November 2004.

2.6 The main complainant submitted numerous letters of support of his claims from his family and friends.

The complaint

3.1 The complainants claim that the main complainant will be detained and tortured if returned to China. The existence of the summons demonstrates that he is a person of interest to the Chinese authorities. Given that the summons has been issued because of his religious activities, he would not be able to practise his religion freely.

3.2 The main complainant and his wife further claim that they are unfit to travel due to the main complainant's deteriorated psychological state of health and his wife's general state of health.

State party's observations on admissibility and merits

4.1 On 15 January 2013, the State party submitted its observations on admissibility and merits of the complaint. The State party submits that the allegations in relation to article 3 of the Convention with respect to the complainant's wife are inadmissible and that the allegations in relation to article 16 of the Convention concerning the main complainant and his wife are also inadmissible. As no allegations are made in relation to the complainant's son, the State party submits that the communication in respect of him is manifestly unfounded and therefore inadmissible. In the alternative, it further submits that all of the complainants' claims should be dismissed as without merit.

4.2 The State party further briefly reiterates the facts of the present case as follows. The complainants are nationals of China. Prior to their arrival in Australia, the complainants claim that they were residents of Longtian, Fujian Province where the main complainant ran a small store. The main complainant claims to have been a practising member of the Quiets Church and to have provided the congregation access to the basement of his store. He alleges that he also participated in Church services. He claims that he was persecuted for his affiliation with the Church, including being sent to a "study class" and that he was subject to both physical and mental abuse by the Chinese authorities, which amounted to torture.

4.3 The complainant's son arrived in Australia on 18 February 2004 on a study visa. The complainant and his wife left China for Australia, arriving on 6 June 2004. He applied for a protection visa on 23 June 2004, including for his wife and son. His application was refused by the Department of Immigration and Citizenship. The complainants sought a review of this decision before the Refugee Review Tribunal, which upheld the decision on 1 December 2004. They appealed the decision of the Tribunal before the Federal Magistrates Court. On 7 November 2005, the Minister for Immigration and Citizenship withdrew from the matter after an examination of the record of the Tribunal decision revealed a probable error of law, namely that the Tribunal had failed to give proper consideration as to whether the complainant would continue to express his purported religious beliefs on return to China. The Federal Magistrates Court made orders setting aside the first decision of the Tribunal and the matter was remitted to the Tribunal for reconsideration. On 2 March 2006, a newly constituted Tribunal reviewed and affirmed the original decision of the Minister for Immigration and Citizenship. The complainants appealed the second Tribunal decision to the Federal Magistrates Court and subsequently to the full Federal Court. Those appeals were dismissed on 13 September 2006 and 21 February 2007 respectively.

4.4 The complainants have also unsuccessfully sought ministerial intervention eight times between 2007 and 2011.[5] Following examination of the main complainant's initial request, the Minister decided not to intervene. Seven subsequent requests for ministerial intervention were fully considered and rejected due to a lack of new evidence sufficient to meet the guidelines for ministerial consideration and because the information submitted by the complainant did not provide a sound basis for believing that there was a significant threat to his or his family members' personal security, human rights or human dignity upon their return to China.

4.5 Following receipt of the present communication, the Department of Immigration and Citizenship initiated a further request for ministerial intervention on 30 November 2010, with the specific purpose of considering the new information in the communication which had not been previously considered by the State party authorities, namely the complainant's allegations regarding his wife's forced abortion and forced insertion of an IUD. On 22 February 2011, the Department of Immigration and Citizenship decided that this new information did not engage Australia's non-refoulement obligations, including under the Convention. The complainant applied to the High Court on 10 July 2012 for judicial review of the Minister's decision not to intervene, but he discontinued this proceeding on 3 October 2012.

4.6 The State party further notes that the claims of the complainants in relation to the Convention are not clear and they have not provided a clear statement of allegations against the articles of the Convention. The State party has therefore had to make assumptions about the nature of their allegations and addresses their submission as primarily an allegation of violation of articles 3 and 16 of the Convention. It assumes that under article 3 of the Convention, the complainants claim that, should they be returned to China, the main complainant would face persecution from the Chinese authorities on account of his Christianity and support for the Quiets Church. They appear to allege this conduct would amount to torture. They also appear to claim that because of the complainant's wife's previous alleged forced termination of pregnancy and IUD implantation, should they be returned to China, she might be subjected to treatment amounting to torture. There are no specific allegations regarding the complainant's son. Furthermore, under article 16 of the Convention, the complainants claim that deterioration in the main complainant's mental health and his wife's general health has rendered both unfit to travel. The State party assumes that the complainants allege that their removal from the State party would amount to cruel, inhuman or degrading treatment in breach of article 16 of the Convention.

4.7 The State party notes that the complainants also make claims about their treatment in the State party, which allegedly engages obligations under the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Convention Relating to the Status of Refugees. In this connection, the State party submits that references to rights outside the Convention are inadmissible *ratione materiae* and will not address these claims.

4.8 Further, as concerns the allegations of the complainants under article 3 of the Convention that, should the State party return the complainant and his family to China, there would be substantial grounds for believing that they would be in danger of being subjected to torture, the State party notes that it is the responsibility of the complainants to establish a prima facie case for the purpose of admissibility of a claim under rule 113 (b) of the rules of procedure.

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[5] Requests made under section 417 of the Migration Act 1958 (Cth) on 26 March 2007, 21 May 2008, 4 February 2009, 20 October 2009 and 5 August 2010 and under Section 48B on 21 May 2008, 4 February 2009 and 5 August 2010.

4.9 In light of the above, the State party observes that the complainants appear to claim that because of the complainant's wife's alleged previous forced termination of pregnancy and insertion of an IUD, should she be returned to China she would face future treatment amounting to torture. The State party maintains that this claim is inadmissible as they have not substantiated how the complainant's wife is at risk of future adverse treatment in her present circumstances, or how possible future treatment would amount to torture within the meaning of article 1 of the Convention. The State party also maintains that the claim is manifestly ill-founded.

4.10 Furthermore, the State party submits that there are no substantial grounds for believing that the complainants would be subject to torture upon their return to China. It recalls that the onus of proving that there is "a foreseeable, real and personal risk of being subjected to torture" upon deportation rests with the complainants.[6] The risk need not be "highly probable", but it must be "assessed on grounds that go beyond mere theory and suspicion".[7] The Committee has further expressed the view that "the danger must be personal and present".[8]

4.11 The State party submits that the complainants have not provided credible evidence to demonstrate that the main complainant would be personally at risk of adverse treatment, or that such treatment that he alleges may occur would amount to torture under article 1 of the Convention.

4.12 The State party further notes that the Committee has stated that, in exercising its jurisdiction pursuant to article 3 of the Convention, it will give considerable weight to findings of fact that are made by the State party concerned.[9] While the Committee has rightly indicated that it is not bound to accept those findings and must freely make its own assessment of the facts, the State party submits that in this case the evidence before the Committee does not disclose a real risk of torture in relation to the complainant. In this respect, it notes that the Department of Immigration and Citizenship and later the Refugee Review Tribunal concluded that the main complainant will not "face any risk of harm for reasons of religion if he returns to China now or in the foreseeable future".

4.13 In the context of the first decision of the Tribunal, the State party notes that after reviewing his written submissions and taking oral evidence, the Tribunal rightly gave the complainant the benefit of the doubt and accepted that he was a Christian and had been a member of an underground church in China, even though he displayed a very limited knowledge of that faith. However, the Tribunal rejected his claim that he was a "particularly key member in the underground church" or that he was the target of persecution by the Chinese authorities. Despite numerous claims that he had been interrogated and detained by the local Public Security Bureau for periods of several weeks, which the complainant cited as evidence of the interest of the Chinese authorities in him, the Tribunal noted that he left China with apparent ease in June 2004. When the Tribunal put this to him, he was unable to explain why this was the case, if he was (as claimed) a key member of an underground church who had been tortured by the authorities. The State party further notes that the complainant claimed that his employees only revealed his true role in the underground church to the authorities after he left China and that a subpoena had been issued for his arrest should he return. When the Tribunal questioned him on how he came to know about the subpoena, he explained that he had discussed the matter with his mother over the telephone. The Tribunal pointed out that this was a very sensitive matter to discuss over the telephone and was not satisfied the claim was truthful. The Tribunal further noted a lack of evidence to substantiate his claims. It found it implausible that, despite claims of repeated interrogations and detention by the local authorities, the complainant did not make attempts to relocate his home or business and continued to conduct secret church services there. Taking these factors into account, the Tribunal upheld the original decision not to grant the complainant a protection visa.

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[6] Communication No. 203/2002, *A.R. v. the Netherlands*, decision adopted on 14 November 2003, para. 7.3.

[7] Communication No. 355/2008, *C.M. v. Switzerland*, decision adopted on 14 May 2010, para. 10.3.

[8] Communication No. 280/2005, *Gamal El Rgeig v. Switzerland*, decision adopted on 15 November 2006, paras. 6 and 7.

[9] Committee against Torture, general comment No. 1 on article 3 of the Convention in the context of article 22, para. 9 (a).

4.14 Following the decision of the Federal Magistrates Court to remit the case to the Tribunal in order to consider whether the main complainant would practise Christianity on his return to China, a reconstituted Tribunal conducted a new hearing with respect to the complainant's claims. In this connection, the State party points out that the Tribunal gave the complainant an opportunity to read through the record of the first hearing with the assistance of an interpreter and to correct any errors. The only clarification he made was with respect to a question about who baptized Jesus. Furthermore, the reconstituted Tribunal did not accept that the complainant was a member of a Christian underground church in China. In this regard, the State party notes that religious beliefs are deeply personal and are not readily subject to tests in courts or tribunals; however, the Tribunal found the complainant's knowledge of Christianity to be superficial and considered that he gained that knowledge through attending a church in Australia. For example, he knew little about the differences between the official and unofficial churches in China, he did not know that Bibles are available for sale in China, nor did he know how Christianity differs from other religions. The State party also points out that the Tribunal noted the inconsistency between his initial claim to be a key activist and his subsequent claim to be only a supplier of premises and money. The Tribunal did not accept that the main complainant was arrested, detained or questioned on account of his religious beliefs in 2004, on the basis that he left China without difficulty in June 2004, when country information indicated there were strict departure controls for persons with adverse records held by the Public Security Bureau. Neither did the Tribunal accept his explanation that bribing an official was sufficient to ensure easy departure, if he were in fact a key activist in whom Chinese authorities were interested, given the "highly risky and expensive" nature of doing so. Taking into account all of the above information, the reconstituted Tribunal decided not to grant the main complainant a protection visa.

4.15 The State party maintains that the Tribunal carefully considers and examines all applications for protection visas. In support of this, the State party further notes that available statistics from the financial year 2011–2012 indicate that China was the country from which Australia received the highest number of applications for protection visas from persons on shore; almost one quarter (24 per cent) of the matters decided by the Tribunal were brought by Chinese applicants and China is in the top five countries in respect of which protection visas have been granted.

4.16 In this connection, the State party notes that the Department of Immigration and Citizenship and the Tribunal consider hundreds of applications for protection visas from Chinese nationals each year. They have access to substantial resources providing country information. Accordingly, it submits that members of the Tribunal have particular expertise on China and significant experience dealing with claims for protection from Chinese nationals.

4.17 The State party further recalls that the complainant appealed the decision of the Tribunal before the Federal Magistrates Court and later to the Federal Court. Thereafter, between 26 March 2007 and 5 August 2010, he made a total of eight requests for ministerial intervention under sections 48B and 417 of the Migration Act. In this connection, the State party notes that the complainants appear to imply in their submissions that because these requests were not successful, new information provided to the Department of Immigration and Citizenship was not properly considered.

4.18 In this regard, the State party submits that the ministerial intervention process offers a genuine opportunity for new claims that may engage its non-refoulement obligations to be made and that these claims are considered in good faith. However, the ministerial intervention process is not intended to be a further exhaustive review of the merits of protection claims: this function is undertaken by the Tribunal and is subject to judicial review by the courts in relation to legal error. It explains that the ministerial intervention process is intended to act as a "safety net" by providing the Minister for Immigration and Citizenship with flexible powers to intervene in favour of an unsuccessful visa applicant if he thinks it is in the public interest to do so. In circumstances such as those of the complainants, where claims in relation to the non-refoulement obligations under the Convention have the same factual basis as claims considered in the protection visa process, the Minister's powers are typically exercised only in exceptional or unforeseen circumstances, and therefore tend to result in visa grants in only a relatively small number of cases. The State party points out that, for example, during the financial year 2011–2012, the Minister decided 1,318 requests for intervention under section 417 of the Migration Act (with China being again the country of citizenship of the greatest number of applicants). The Minister granted visas in 35 per cent of those cases. The fact that the complainant was not successful in his repeated requests for ministerial intervention does not reveal any error in this process; rather it indicates that his case was deemed not to be sufficiently exceptional and did not raise any issues of non-refoulement obligations under the Convention to merit a different outcome than that which had been duly reached in the statutory protection visa assessment process.

4.19 The State party further emphasises that the new information received in January 2009 and in October 2009 from the complainant's friends and family was duly considered by the national authorities. However they did not consider that these statements constituted credible evidence, as these individuals were not objective observers of the complainants' case.

4.20 Furthermore, the State party observes that in a request for ministerial intervention on 5 August 2010, the complainant provided a court summons and detention notice from China, which he alleged to be evidence of his persecution by the Chinese authorities, and would have given weight to claims during his Tribunal hearings. It notes that the Department of Immigration and Citizenship assessed this information and concluded that it did not warrant a referral to the Minister. The assessment found that the summons and detention warrant lacked details to support the complainant's claim that he had previously been detained by the Chinese authorities. The documents did not mention him escaping from detention, did not indicate the location of the detention centre, or provide any other pertinent information relating to his claim. In the assessment, it noted that country information states that the availability of fraudulent documents in China, including summonses, is widespread and therefore did not consider weight should be given to those documents.

4.21 The State party reiterates that the decision not to grant the complainant a protection visa has been properly determined according to Australian law. It notes that the domestic legal system in the State party offers a robust process of merits and judicial review, as well as avenues for administrative appeal. It reiterates that the Tribunal affirmed the conclusions of the initial decision maker that the claims of the main complainant lacked credibility. He had access to and sought judicial review of the decision of the Tribunal. His eight subsequent requests for ministerial intervention, in which he advanced various arguments in support of his claim to remain in the State party, have been carefully considered. In addition, the State party notes that the Department of Immigration and Citizenship initiated a further request for ministerial intervention of its own accord upon receiving the communication, in order to consider the new claims advanced on behalf of the complainant's wife.

4.22 The State party submits that in this case, no significant error or abuse of process is revealed that would warrant the Committee issuing a different decision to that which has been duly reached.

4.23 It maintains that the complainant's claims and evidence have been considered in good faith and found not to enliven the State party's obligations under the Convention, the Convention on the Status of Refugees or the International Covenant on Civil and Political Rights, since it was not accepted that he practised Christianity while in China. In addition, even if the complainant were a committed Christian, as a general follower he could practise his faith with relative freedom within China. The State party reiterates that at the domestic level the main complainant has been inconsistent with regard to his evidence about his activism in the Christian underground church in China. If his claims to be a member of a church are accepted, then it is likely that his primary role involved the provision of a communal space to facilitate church gatherings. Moreover, he has not provided any further evidence of his membership or role in his church in Fujian province.

4.24 Furthermore, the State party notes that the Refugee Review Tribunal also considered independent country information, such as a contemporary report on international religious freedom by the Department of State of the United States of America, which observed that "perhaps 2.5 per cent [of the population] worships in Protestant house churches that are independent of government control".[10] The Tribunal acknowledged that there were many instances where the Chinese authorities required registration or State sanction of religious organizations. However, in respect of Fujian province, the Tribunal noted that "the official religious policy is applied relatively liberally in Fujian although there have been occasional crackdowns on house churches and "underground" Catholics". Moreover, although the complainants submitted a country report from Amnesty International that notes incidences of torture taking place in China as a result of membership of certain religious organizations, the State party submits that the information provided in this report is limited and generalized and does not provide evidence of a foreseeable, real and personal risk of the authors being subjected to torture.

4.25 The State party notes that the information used by the national authorities in their assessment of the complainant's application recognized that there were significant differences in the ability of individuals to practise non-State-sanctioned Christianity from province to province within China.[11] Country information indicated that while there was some risk of State action that could amount to torture under article 1 of the Convention being directed toward leaders of Christian sects that were not sanctioned by the State, the risk to general followers was low.[12] Country information also indicated that religious practice, including Christianity, was becoming more widespread and public in China.[13]

4.26 In light of the above, the State party submits that the complainants' claim that the main complainant would be subject to torture by Chinese Government authorities if returned to China is without merit. The State party authorities reached the considered view that his claims were not plausible and that he did not face a well-founded fear of persecution, or a real risk of torture if returned to China. It maintains that, even if he were a committed Christian, the risk of him personally suffering torture due to his religious beliefs in all of the circumstances is not real and therefore does not engage the State party's non-refoulement obligations.

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[10] United States Department of State, *International Religious Freedom Report 2005*, available from http://www.state.gov/j/drl/rls/irf/2005/51509.htm.

[11] United States Commission on International Religious Freedom, *2011 Annual Report*, p. 126.

[12] Ibid.

[13] Ibid., p. 125.

4.27 Finally, the State party notes that the complainants appear to claim that the act of returning them to China would constitute cruel, inhuman or degrading treatment, effectively breaching article 16 of the Convention, due to the effect it would have on the main complainant's mental health and his wife's general health.

4.28 The State party submits that the claim of the main complainant and his wife that their removal from Australia per se would constitute a violation of article 16 of the Convention is inadmissible, as insufficient evidence has been provided to demonstrate that they would suffer severe pain so as to meet the threshold for constituting cruel, inhuman or degrading treatment or punishment. This is consistent with the Committee's decision in *A.A.C. v. Sweden* where the Committee concluded "that the aggravation of the complainant's state of health which might be caused by his deportation is in itself insufficient to substantiate this claim, which is accordingly considered inadmissible".[14] Consequently, the effect on the complainants' health, should they be returned to China, would not amount to treatment inconsistent with article 16 of the Convention.

4.29 The State party submits that it has undertaken appropriate steps to ensure the complainants were fit to travel prior to removal action taking place. It notes that an assessment carried out on 29 September 2010, at the instigation of the International Organization for Migration and by independent psychologists, found that the main complainant was fit to travel. A similar assessment conducted on 26 July 2010 also found him fit to travel.

4.30 Further, the State party notes that the complainants have failed to provide evidence, such as medical certificates or opinions, to specify the precise nature of Ms. Zhang's alleged medical condition. It reiterates that, prior to any future removal action, the complainants would undergo independent medical assessment to ensure that they were fit to travel.

4.31 For these reasons, the State party submits that information provided by the complainants is not sufficient to substantiate a claim under article 16 and the claim is therefore inadmissible.

4.32 In the alternative, the State party submits that the impending removal of the complainants would not cause mental pain or suffering sufficient to meet the requirements of article 16 of the Convention and as such the claim should be rejected as being without merit.

4.33 On 24 May 2013, the State party requested the Rapporteur on new complaints and interim measures of the Committee to lift the request for interim measures made on behalf of the complainants and submitted further observations in the present case. It reiterates that the main claim of the complainant before the Committee appears to be based on his concern that his case has not been properly investigated by the State party authorities. In this connection, the State party notes that in its previous observations, it outlined the comprehensive domestic processes undertaken to consider the claims of the complainants, which included a review of the merits, a judicial review and an examination of the numerous requests for ministerial intervention.

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[14] Communication No. 227/2003, decision adopted on 16 November 2006, para. 7.3. See also, communication No. 083/1997, *GRB v. Sweden*, Views adopted on 15 May 1998, para. 6.7.

4.34 Finally, the State party notes that on 24 January 2013, the complainant's son lodged an application for a partner visa and has been issued a bridging visa to permit him to remain lawfully in the State party until his application is finally determined.

Complainants' comments on the State party's observations on admissibility and merits

5.1 In reply to the State party's observations on 14 June 2013, the complainants requested that they not be removed from the State party until a decision is adopted by the Committee concerning their case.

5.2 The complainants maintain that not all information submitted by them at the domestic level has been given due "attention and weight" by the national authorities. In this connection, they submit that the information referred to by the State party concerning the complainant's wife's claims about the forced abortion and forced insertion of an IUD has never been intended by them to be part of the present protection visa process.

5.3 As to the State party's reference to the independent medical assessments of the main complainant and his wife, the complainants point out that these assessments are of no relevance. For example, since the assessments took place, the complainant's wife has had surgery and ongoing treatment for thyroid cancer. In addition, the respective medical assessments were conducted in less than 15 minutes (for the complainant and his wife together) and were conducted with an interpreter. No examination was conducted and the assessment was based on reports only.

5.4 On 8 July 2013, the complainants submitted further comments. They note that the complainant's son was a minor at the time of the initial application for a protection visa and therefore was included in it, together with the main complainant and his wife. The complainant's son has since got married and applied to be included on his wife's recently granted permanent residency visa and therefore is no longer part of the present complaint. Consequently, the complainant's son is not included and referred to in the present comments.

5.5 Further, the main complainant made no claims of persecution on behalf of his wife in his application to the Department of Immigration and Citizenship for a protection visa, or in his complaint lodged with the Committee, as she is his wife and she travelled to the State party with him; as required, information about her was included in the application. In this connection, the complainants explain that the information about her was provided to the Committee as an explanation for her continued stay in the State party, because, based on her medical condition, she was unfit to travel.

5.6 As to the main complainant's role in the Quiets Church, the complainant maintains that he did not merely provide access to the basement of his store. In this regard, he refers to the letter of October 2009 of J. J. G., in which she states that she often attended church meetings held in the complainant's basement; specifically, the Church met in the complainant's house and basement during 2001 and 2004; and that he was present at church meetings during this time and was arrested in 2001 and 2004. The complainants also note that the fact that the complainant participated in the Quiets Church services and that he was persecuted for his affiliation with the Church and physically and mentally abused by the Chinese authorities, amounting to torture, is also supported by five Chinese residents in Australia, who confirm that the main complainant attended services of the Quiets Church in his basement in China and that he was arrested along with other church members in 2004. In addition, one of the statements confirms that in 2004 the complainant was detained by the Chinese authorities in the Gutian detention centre in Fujian province. In this connection and in the context of the complainant's inability to provide documentary evidence in support of each and every statement he has made, the complainants point out that, according to the procedures and criteria for determining refugee status of the Office of the United Nations High Commissioner for Refugees (UNHCR) under the Convention on the Status of Refugees, to require applicants to support their statements with documentary or other proof is rather an exception than the rule.

5.7 In light of the above, the complainants submit that the facts presented by the main complainant have been coherent, plausible and consistent. Evidence provided by others supports the information that the complainant has provided. Moreover, independent country information from relevant and reliable sources objectively supports claims of persecution in China based on underground Christianity. Therefore, his fear is well founded.

5.8 As to the State party's submission that the complainant's seven subsequent requests for ministerial intervention were fully considered and rejected due to lack of new evidence sufficient to meet the guidelines for ministerial consideration, the complainants refer to different letters of their fellow Christians submitted as part of the subsequent requests confirming that the complainant regularly attended the Quiets Church in his basement or home; that he was arrested in 2001 and 2004; and that the Quiets Church continued to meet in the complainant's basement (after his departure for Australia) and met there in early 2009, during which time Church members were arrested by the authorities. In this connection, the complainants reiterate that there are warrants for the complainant's arrest and detention and that he will be detained upon his return to China.

5.9 The complainants further maintain that the main complainant is a Christian and if returned to China, he would continue to practise Christianity as an active member of the Quiets church. This fact would put him at risk of further arrest and detention and, based on his past experience, of torture. The complainants also note that the fact that he has lived for a considerable period of time in the State party would be considered by the Chinese authorities as "alignment with the West" and thus would put him at additional risk.

5.10 The complainants submit that, in the course of the protection visa process, the main complainant submitted to the national authorities evidence, in the form of written statements by his fellow Christians, regarding religious persecution in China. The fact that the main complainant would be persecuted and tortured if returned to China is supported by his past experience, the arrest and imprisonment of fellow Christians in 2009, who met in the basement of his shop in China, and the fact that an arrest warrant for him has been issued. The complainant further provides excerpts from different reports and mass media publications concerning, inter alia, the plan of the Chinese authorities to abolish all unregistered churches by 2025 and persecution, detention and harassment of different religious groups in China.

5.11 In relation to the State party's submission that the removal of the complainants from Australia would not in itself constitute inhuman or degrading treatment or punishment, as the State party immigration authorities routinely conduct assessments on individuals' fitness for travel prior to removing them, the complainants note that the Department of Immigration and Citizenship has disregarded the medical reports of 26 June and 28 June 2013 by an expert clinician in psychiatry, Dr. M. R., in which it was noted that due to the deterioration in the complainant's mental health and his wife's mental health, they were not fit to travel, nor to report to the Department. It is stressed that the complainants are suffering from severe psychiatric disorders, which require the care of a treating psychiatrist and significant medication and which have deteriorated over time primarily because of the continual denial of the Department to grant them protection.

5.12 The complainants note that their mental status has rendered them incapable of working whilst they have been in the State party. Furthermore, even if there were a possibility that they would not suffer persecution upon return to China, they would not be able to relocate to a safe place in China and to receive social resources, due to household registration and the policy on allocation of resources in China. In addition, the complainants submit that it is also inhuman to remove them from the State party because their son and grandchildren reside in Australia.

5.13 As regards the State party's argument that the main complainant was issued with a passport and that he and his wife left China in June 2004 without any difficulties or hindrance, the complainants, by referring to the UNHCR procedures and criteria for determining refugee status under Convention on the Status of Refugees, maintain that the existence of a passport may not serve as an indication of the absence of fear. In this connection, the complainants believe that, in light of the responses of the Department of Immigration and Citizenship to all the new information presented by the main complainant with each subsequent request for ministerial intervention, the Department has adopted a negative approach towards him and would never adopt a positive decision in relation to him.

5.14 The complainants further express the criticism that the State party authorities did not consider the statements of support from friends and family concerning the complainant's involvement with the Quiets Church and his persecution in China as constituting credible evidence.

5.15 Further, as concerns the court summons and detention notice provided by the complainant and the subsequent assessment by the national authorities that these documents lacked any concrete details to support the main complainant's claim, the complainants note that the summons and detention warrant submitted to the national authorities on 5 August 2010 were only issued on 18 January 2010 and 1 February 2010 and that therefore they did not exist at the time of the earlier hearings. They were submitted within the ministerial intervention proceedings as evidence of anticipated future persecution, not of previous detention.

5.16 As to the State party's submission that the main complainant's claim for a protection visa were considered properly and were subject to a "robust process of merits and judicial review", the complainants firstly point out that this process involved only two opportunities to provide evidence of claims of persecution in their country of origin and their claims of future risk in that country. The first opportunity was at an interview held at the Department of Immigration and Citizenship, while the second opportunity was at a hearing before a member of the Refugee Review Tribunal. They further note that thereafter a court reviewed the decision that had been adopted in order to determine if an error of law had been made. A court considers whether the decision has been made according to the law and does not consider the merits of an application. If a court finds that there has been an error, the matter is remitted back to the Tribunal and allocated to another member for assessment.[15] Therefore, the complainants submit that the neither the Federal Magistrates Court, nor any higher court, have any jurisdiction to review the merits of the complainant's case.

5.17 Furthermore, the main complainant submits that he is able personally to name at least five people from Fujian province who have been granted protection by the State party in the last decade on the grounds of religious persecution for their Christian faith.

5.18 Finally, the complainants reiterate that the main complainant has provided evidence, through statements of support, of his past persecution by the Chinese authorities. He was forced to join a "study class", organized by the communist Government, was continually harassed by Chinese officials and was sent to a detention camp, where he experienced both mental and physical abuse resulting in permanent damage. For example, he was beaten by police, as well as by inmates and guards in the prison. His jaw was fractured during his arrest in 2004. In this connection, the complainants reiterate that a detention warrant was issued in the main complainant's name in February 2010. In addition, the complainants reiterate that according to the psychiatric reports of 2010 and of 2013, due to his deteriorated mental health, the main complainant is advised not to travel.

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[15] A reference is made to communication No. 416/2010, *Ke Chun Rong v. Australia*, decision adopted on 5 November 2012, para. 5.5.

5.19 In light of the above, the complainants maintain that the main complainant's claims under the Convention are admissible and well founded.

Issues and proceedings before the Committee

6. Preliminarily, the Committee notes the submission provided by the complainants on 8 July 2013 that the complainant's son, Da Huang, is no longer part of the present complaint. In these circumstances, the Committee decides to discontinue examination of the present communication, insofar as it concerns the complainant's son.

Consideration of admissibility

7.1 Before considering any claims contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.2 The Committee notes that in the instant case the State party has recognized that the main complainant and his wife have exhausted all available domestic remedies, as required under article 22, paragraph 5 (b) of the Convention.

7.3 The Committee further takes note of the State party's argument that the communication should be declared inadmissible as manifestly unfounded.

7.4 Concerning the complainants' claim under article 16 of the Convention relating to their expulsion in light of their health, the Committee recalls its prior jurisprudence that the aggravation of the condition of an individual's physical or mental health by virtue of a deportation is generally insufficient, in the absence of additional factors, to amount to degrading treatment in violation of article 16.[16] The Committee notes the medical evidence presented by the main complainant demonstrating that he suffers from a deteriorated state of mental health. The Committee considers, however, that the aggravation of the complainant's state of health, which might be caused by his deportation, is in itself insufficient to substantiate this claim. Further, as regards the complainant's wife, the Committee notes that she has not presented any medical documentation or other evidence concerning her present state of health. Consequently, the Committee considers this claim as insufficiently substantiated for the purposes of admissibility in accordance with article 22, paragraph 2, of the Convention.

7.5 The Committee considers, however, that the main complainant's claim that he would be tortured if returned to China on account of his religion raises substantive issues under article 3 of the Convention, which should be examined on the merits and declares this part of the communication admissible.

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[16] See, e.g. communication No. 227/2003, *A.C. v. Sweden*, decision adopted on 16 November 2006, para. 7.3.

Consideration of the merits

8.1 In accordance with article 22, paragraph 4, of the Convention, the Committee has considered the present communication in the light of all the information made available to it by the parties concerned.

8.2 The issue before the Committee is whether the removal of the main complainant to China would violate the State party's obligation under article 3 of the Convention not to expel or to return (*refouler*) a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to China. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would return.

8.3 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention, that "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable",[17] but it must be personal and present. In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal.[18] The Committee recalls that under the terms of its general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned, while at the same time it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.[19]

8.4 The main complainant claims that he will be detained and tortured if returned to China because of his religious activities. The Committee notes the State party's submission that in the present case the complainant has not provided credible evidence and has failed to substantiate that there is a foreseeable, real and personal risk that he would be subjected to torture by the authorities if returned to China, that his claims have been reviewed by the competent domestic authorities, in accordance with the domestic legislation, and that the latter were "not satisfied that the author was a person to whom the State party had protection obligations under the Refugee Convention" or that he will "face any risk of harm for reasons of religion if he returns to China now or in the foreseeable future". The Committee notes that in so doing, the State party authorities took the general human rights situation in China into account. While not underestimating the concerns that may legitimately be expressed with respect to the current human rights situation in China concerning freedom of religion, the State party authorities and courts have established that the situation in that country does not in itself suffice to establish that the complainant's forced return there would entail a violation of article 3 of the Convention.

8.5 In this connection, the Committee, irrespective of the question regarding the complainant's affiliation with the church, is of the view that he has not submitted sufficient evidence to substantiate that he would risk being subjected to torture by the authorities if returned to China. It notes that the complainant has only submitted a copy of the summons and detention warrant issued by the Chinese authorities on 18 January 2010 and on 1 February 2010, respectively; however these documents contain no information whatsoever as to the reasons for which they were issued. Moreover, no medical evidence is available in the case file corroborating the complainant's account of having experienced torture while in detention. In any event, the Committee recalls that, although past events may be of relevance, the principle aim of its assessment is to determine whether the complainant currently runs a risk of being subjected to torture upon his arrival in China.[20]

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[17] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44 and Corr.1), annex IX, para. 6.

[18] See, inter alia, communications No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November 2005 and No. 226/2003, *T.A. v. Sweden*, decision adopted on 6 May 2005.

[19] See, for example, communication No. 431/2010, *Y. v. Switzerland*, decision adopted on 21 May 2013, para. 7.5.

9. In the circumstances and in the absence of any other pertinent information on file, the Committee finds that the complainants have failed to provide sufficient evidence that in case of the main complainant's return to his country of origin, he would face a foreseeable, real and personal risk of being tortured.

10. Accordingly, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the removal of the complainants to China by the State party would not constitute a breach of article 3 of the Convention.

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[20] Reference is made to communication No. 61/1996, *X., Y. and Z. v. Sweden*, Views adopted on 6 May 1998, para. 11.2.

Communication No. 438/2010: *M.A.H. and F.H. v. Switzerland*

Submitted by:	M.A.H. and F.H. (represented by counsel, Tarig Hassan)
Alleged victims:	The complainants
State party:	Switzerland
Date of complaint:	15 November 2010 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 7 November 2013,

Having concluded its consideration of complaint No. 438/2010, submitted to the Committee against Torture on behalf of M.A.H. and F.H. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainants, their counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainants are M.A.H. (born in 1953) and his spouse, F.H. (born in 1957), both Tunisian nationals. Their asylum applications were rejected in Switzerland and, at the time of submission of the complaint, they were awaiting expulsion to Tunisia. They claim that their expulsion to Tunisia would constitute a violation, by Switzerland, of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainants are represented by counsel, Tarig Hassan.

1.2 On 29 November 2010, under rule 114, paragraph 1 (former rule 108, paragraph 1), of its rules of procedure (CAT/C/3/Rev.5), the Committee requested the State party to refrain from expelling the complainants to Tunisia while their complaint was under consideration by the Committee. On 30 November 2010, the State party informed the Committee that the Federal Office for Migration had requested the competent authorities to stay the execution of the expulsion order in relation to the complainants until further notice.

The facts as presented by the complainants

2.1 The complainants lived in Tunis until September 2000. In 1998, the first complainant, together with two friends, supported families of political prisoners and the Ennahda political party, including L.S., the party's leader, who was released in November 2007. In September 2000, the complainant's friends were arrested by the Tunisian secret service; shortly thereafter the second complainant's shop was searched. Fearing persecution, the complainants decided to leave the country.

2.2 On 7 October 2000, the complainants departed from Tunisia and travelled to Switzerland where they filed an application for asylum on 12 October 2000. While they were in Switzerland, several summonses were sent to their home in Tunis. On 10 June 2002, the Swiss Federal Office for Refugees (now the Federal Office for Migration) rejected their application and ordered their expulsion. On 20 October 2002, the complainants asked for a reconsideration of the negative decision, providing new evidence. On 7 November 2002, the Office for Refugees rejected the request. On 5 December 2005, the Swiss Asylum Appeal Commission, (now replaced by the Swiss Federal Administrative Court) rejected the complainants' appeal. On 18 January 2006, the complainants filed another request for reconsideration with the Federal Office for Refugees, which the latter decided not to consider on its merits on 27 February 2006. On an unspecified date, the Federal Administrative Court rejected the complainants' appeal on formal grounds as they failed to pay related costs. On 7 December 2006, the complainants were repatriated to Tunisia.

2.3 Upon arrival in Tunisia, the complainants were stopped and questioned separately by officials. Since the first complainant was in very poor health, he was not arrested but admitted to hospital for a day. The second complainant was given a summons from the Tunisian secret service for both of them. They complied with the summons and were interrogated. The second complainant was further summoned and interrogated again as to her husband's contacts in Switzerland and was warned that he was not allowed to leave the country. The first complainant was interrogated at the Ministry of the Interior as to whether he had supported the families of political prisoners and whether he had been in contact with politically active Tunisians in Switzerland. He was not arrested on health grounds but placed under police surveillance. The police visited the complainants' house twice a week over several months. In addition, the complainants were called for questioning to a police station. According to the first complainant, the authorities suspected him of Ennahda membership and of being in contact with its leader, L. S. Under strong psychological pressure, the complainants left Tunisia for Libya, on fake passports, on 21 July 2007.

2.4 On 30 July 2007, the complainants returned to Switzerland and filed another application for asylum. On 1 and 27 August 2007 and 22 April 2008, they were questioned by the Swiss asylum authorities. On 8 September 2008, the Federal Office for Migration rejected their application and ordered their expulsion. Counsel subsequently appealed the decision. On 29 October 2010, the Federal Administrative Court dismissed the appeal. On 4 November 2010, the Office for Migration issued an order for the complainants to leave Switzerland by 2 December 2010.

2.5 The complainants submit that the Swiss asylum authorities did not find their accounts credible for the following reasons. First, their second asylum application was based on the first complainant's political activities which were not deemed credible during the first asylum proceedings. Furthermore, his account of his involvement in political activities was inconsistent with his statements during the first asylum proceedings. Thus, during the first proceedings, he maintained that he had founded a group to support political prisoners' families, whereas during the second asylum proceedings, he argued that he was a member of Ennahda. During the first asylum proceedings, the complainants contended that the police had searched their house and the shop only once, whereas during the second asylum proceedings, the second complainant stressed that the police had visited their house on several occasions. Second, the Swiss authorities considered that the complainants' statements contradicted each other. Thus, the first complainant alleged that after questioning him at the Ministry of the Interior, the police had continuously paid visits to their house and taken him to the police station for questioning and that they had been harassed for some two months. At the same time, the second complainant contended that the first complainant had never been questioned or taken to the police station on those occasions, due to his poor health, and that the police harassed them from December 2006 to approximately one month prior to their departure. Third, the Swiss authorities argued that if the first complainant had indeed been wanted by the police, he would not have been allowed to obtain a passport and leave the country. Fourth, although the Swiss authorities admitted that Tunisian nationals returning from a prolonged stay abroad were routinely questioned upon arrival, such measures were not of such intensity as to be relevant in terms of asylum law. The Swiss authorities concluded that the evidence provided by the complainants did not suffice to establish the existence of a well-founded fear of persecution in Tunisia.

2.6 The complaints further submit that the Swiss asylum authorities stated that their expulsion from Switzerland was reasonable, lawful and possible. First, the complainants had failed to prove that they had been subjected to State persecution in Tunisia and there were no reasons to believe that they would be subjected to torture or other treatment contrary to the Convention, should they return to Tunisia. Second, even if the first complainant suffered from latent tuberculosis, depression and hepatitis C, as confirmed by medical certificates, those diseases could well be treated in Tunisia, which has an excellent and accessible health-care system.

2.7 The complainants submit that, contrary to the State party's contention, they would face real and imminent risk of being subjected to torture or other inhuman and degrading treatment in Tunisia. They submit that the Swiss authorities had not reviewed their case with due diligence, given that the decision of the Federal Administrative Court of 29 October 2010 mentioned a wrong date for their departure from the country and that the authorities ignored the new evidence presented, in particular the summons of 7 December 2006 with regard to both complainants and a summons of 23 January 2007 with regard to the first complainant. These documents corroborate the fact the Tunisian authorities have an important interest in controlling and possibly punishing the complainants, whom they suspect of being linked to Ennahda, and not merely because they have resided abroad for several years.

2.8 The complainants further submit that they clarified inconsistencies in their statements in their appeal. In particular, they explained that the first complainant had not informed his spouse of the questioning at the police station for "cultural reasons" and because he intended to spare her from further sorrow. Furthermore, they stressed that they had travelled to Switzerland on fake passports, which they had obtained by bribing officials. They refer to the report of the Department of State of the United States of America, according to which corruption is on the rise in Tunisia.[1] In addition, they did not leave Tunisia by air but crossed in a collective taxi into Libya. The complainants therefore contend that the fact that they were able to leave Tunisia does not mean that they are not wanted there.

2.9 The complainants argue that they would be arrested, if forcibly returned to Tunisia again. First, they were under police surveillance at the time of their departure and they had been warned not to leave the country. Second, the first complainant is indeed a supporter of Ennahda and attempted to establish contact with its representative in Switzerland, A.A.A.G. Third, the first complainant supported the families of political prisoners and thus was indirectly connected to the leader of Ennahda, L.S. Fourth, it cannot be assumed that the complainants would be released, if questioned at the airport upon return, given that they have fled Tunisia twice and were subjected to prolonged and thorough scrutiny upon return in 2006. Leaving the country illegally entails a prison sentence between 15 days and 6 months. The complainants contend that there is sufficient evidence to believe that the Tunisian authorities would arrest and possibly convict them of dissident activities.

2.10 The complainants further submit that conditions of detention in Tunisia are extremely harsh and that the judicial system is deficient, in particular in politically motivated cases, and refer to reports of non-governmental organizations in that sense.[2] In addition, the first complainant has serious health issues, as acknowledged by the Swiss authorities, and a prison sentence would put his life at risk and would subject him to inhuman and degrading treatment.

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[1] Department of State, "2009 Country reports on human rights practices: Tunisia", 11 March 2010.

The complaint

3. The complainants argue that their forcible return to Tunisia would constitute a breach by Switzerland of its obligations under article 3, paragraph 1, of the Convention.

State party's observations on the merits

4.1 On 24 May 2011, the State party submitted its observations on the merits. It recalls the facts of the case and notes the complainants' argument before the Committee that they would be at risk of being subjected to torture or inhuman treatment, if returned to their country of origin. It notes that they do not present any new elements that would call into question the decisions of the asylum authorities of the State party; neither do they explain the inconsistencies in their allegations revealed by the said authorities.

4.2 The State party further clarifies the asylum proceedings pursued by the complainants. It notes, in particular, that on 10 June 2002, the Federal Office for Refugees rejected the complainants' application for asylum, submitted on 12 October 2000, considering that their allegations lacked credibility and that nothing in their case file led it to conclude that they would face treatment or punishment contrary to article 3 of the European Convention on Human Rights, which states that no one shall be subjected to torture or to inhuman or degrading treatment or punishment, if forcibly returned to Tunisia. On 7 November 2002, the Federal Office for Refugees rejected the complainants' request for reconsideration. On 5 December 2005, the Swiss Asylum Appeal Commission rejected their subsequent appeal. On 18 January 2006, the complainants filed another request for reconsideration, arguing that the first complainant had had to be admitted to a psychiatric asylum for treatment. On 27 February 2006, the Federal Office for Migration decided not to examine their request on the merits. On 1 May 2006, the Swiss Asylum Appeal Commission refused their request on formal grounds as they had failed to pay the required fee. On 7 December 2006, the complainants were repatriated to Tunisia and medical assistance was provided to them during the journey.

4.3 The State party further submits that on 30 July 2007, the complainants filed another application for asylum at Zurich airport. The complainants argued, in particular, that upon their return to Tunis, they had been summoned to the Ministry of the Interior on several occasions and that their dwellings had been searched. They provided copies of three summonses and a number of medical reports. On 8 September 2008, the Federal Office for Migration rejected their application for asylum. On 29 October 2010, the Federal Administrative Court dismissed their appeal on the grounds that their allegations lacked credibility and that the summonses provided did not suffice to conclude otherwise. The Court also pointed out that the health-related problems of the first complainant could well be treated in Tunisia.

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[2] Freedom House, "Freedom in the World 2010: Tunisia", available from http://www.freedomhouse.org/report/freedom-world/2010/tunisia (3 December 2013); Amnesty International, "Tunisia – Amnesty International report 2010", available from http://www.amnesty.org/en/region/tunisia/report-2010 (3 December 2013); Human Rights Watch "World Report 2010 – Tunisia", available from http://www.hrw.org/world-report-2010/tunisia (3 December 2013).

4.4 The State party recalls that, under article 3 of the Convention, States parties are prohibited from expelling, returning or extraditing a person to another State where there exist substantial grounds for believing that he or she would be subjected to torture. To determine the existence of such grounds, the competent authorities must take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. With reference to the Committee's general comment No. 1, the State party adds that the author should establish the existence of a "personal, present and real" risk of being subjected to torture upon return to the country of origin. The existence of such a risk must be assessed on grounds that go beyond mere theory or suspicion. Additional grounds must exist for the risk of torture to qualify as "real" (paragraphs 6 and 7 of general comment No. 1). The following elements must be taken into account to assess the existence of such a risk: evidence of a consistent pattern of gross, flagrant or mass violations of human rights in the country of origin; allegations of torture or ill-treatment sustained by the author in the recent past and independent evidence thereof; political activity of the author within or outside the country of origin; evidence as to the credibility of the author; and factual inconsistencies in the claim of the author (paragraph 8 of general comment No. 1).

4.5 With regard to the existence of gross, flagrant or mass violations of human rights, the State party submits that this is not in itself a sufficient basis for concluding that an individual might be subjected to torture upon his or her return to his or her country. The Committee should establish whether the individual concerned would be "personally" at risk of being subjected to torture in the country to which he or she would return.[3] Additional grounds should be adduced for the risk of torture to qualify as "foreseeable, real and personal" under article 3, paragraph 1, of the Convention.[4] The risk of torture must be assessed on grounds that go beyond mere theory or suspicion.[5]

4.6 In light of the above, the State party submits that after President Ben Ali was overthrown in mid-January 2011, several interim Governments have attempted to put in place a democratic transition process in Tunisia. Transition authorities, with support from the international community, are in charge of elaborating a new constitution, restoring the rule of law and promoting human rights. According to the new Prime Minister, the main goal of the authorities is to maintain security in the country. Although rallies and protests remain frequent, there is no civil war or generalized violence in Tunisia nowadays. Repatriation to the country is therefore considered as reasonably required by the Swiss asylum authorities. The State party further reiterates that the country situation is not in itself a sufficient ground to conclude that the complainants might be subjected to torture in the event of removal. It argues that the complainants failed to show that they would face a foreseeable, real and personal risk of being subjected to torture, if returned.

4.7 With regard to the allegations of torture or ill-treatment sustained in the recent past and the existence of independent evidence thereof, the State party underlines that the complainants have not claimed to have been subjected to torture or ill-treatment, either before the Swiss authorities or the Committee. During the first asylum proceedings, they maintained that their friends had been arrested because of their political activities and that the police had searched the second complainant's shop and the complainants' dwellings, for which reason they had decided to flee Tunisia. The competent authorities in Switzerland examined these allegations and considered that they lacked credibility. It was established, in particular, that there was nothing in the case file to conclude that the complainants would be subjected to treatment or punishment prohibited under article 3 of the European Convention on Human Rights. During the second asylum proceedings, the complaints maintained that upon their return in Tunisia in 2006, they had, on several occasions, been summoned to the Ministry of the Interior and questioned as to their residence in Switzerland and their Tunisian contacts there. The Swiss authorities stated that Tunisian nationals returning from a prolonged stay abroad were routinely questioned upon arrival. Furthermore, the complainants had been immediately released after questioning. The Swiss authorities also found that the copies of summonses provided by the complainants were not decisive. The State party points out that the first complainant stated that he had not been arrested but instead admitted to hospital on health grounds. Although the second complainant had been arrested, she had been released with no delay after questioning. Hence, the State party argues that the treatment sustained by the complainants, as claimed before the domestic authorities and the Committee, would not amount to a violation of the Convention.

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[3] See communication No. 94/1997, *K.N. v. Switzerland*, Views adopted on 19 May 1998, para. 10.2.

[4] Ibid., para. 10.5 and communication No. 100/1997, *J.U.A. v. Switzerland*, Views adopted on 10 November 1998, paras. 6.3 and 6.5.

[5] Para. 6 of general comment No. 1.

4.8 With regard to the political activities pursued by the first complainant, the State party notes that both before the domestic authorities and the Committee, he contended that he had supported political prisoners in Tunisia and explained the consequences thereof. These allegations were duly examined by the Swiss asylum authorities, which dealt with the complainants' first asylum application and two requests for reconsideration. The domestic authorities established that the first complainant's allegations as to his political activities in Tunisia lacked credibility. Moreover, the complainants presented another version of such activities during the second asylum proceedings. The State party notes that these political activities are in any event insufficient to argue that there are substantial grounds to believe that the complainants would be persecuted by the Tunisian police or subjected to torture, if returned. It underlines that the complainants never alleged that they had been subjected to ill-treatment in relation to such activities, either before their first departure from Tunisia or between their repatriation to Tunis in December 2006 and their second departure therefrom in July 2007. It notes that, even assuming that the first complainant had indeed been politically active in 1998, his political activities would no longer be relevant in the current political context in Tunisia. The State party underlines that the first complainant does not pretend to have been politically involved in Switzerland.

4.9 With regard to the credibility of the complainants and the factual consistency of their claims, the State party submits that the domestic asylum authorities established that their allegations lacked credibility and that their accounts do not lead to the conclusion that there were substantial grounds to believe that they would be subjected to torture, if returned. In particular, the complainants' first application for asylum of 12 October 2000 was rejected as their allegations, especially concerning the first complainant's political activities, were considered implausible by the domestic authorities. Thus, at the registration centre, the first complainant stated that he had supported the families of political prisoners for 10 years before having founded, together with two other persons back in 1998, a group which had no connection with any other group. However, in his account to the cantonal authorities, he stated that he had financially supported the families of political prisoners only since 1998, when he had founded a group together with two other persons who belonged to the El-Daawa Wal-Tabligh group. Before that, he had not been interested in politics. The State party also points to inconsistencies in the first complainant's accounts regarding the places where he would hide when he knew that he was wanted by the authorities. Sometimes he submitted that he had slept in different places every night, sometimes he stated that he had stayed at the same place throughout the relevant period. He explained the inconsistencies by the fact that he had visited different persons in the daytime. The State party adds that during the first asylum proceedings, the first complainant stated that he had learnt from a neighbour that his two colleagues had been arrested and that the authorities had been looking for him. As these statements were not corroborated by any evidence, the Swiss authorities considered them implausible.

4.10 With reference to the findings of the domestic authorities, the State party further submits that if the first complainant had left Tunisia as described in his first application for asylum, it is implausible that he would have run the risk of passing, on two occasions, through customs in Tunis international airport with a passport bearing his name and of travelling by local airlines. It is also implausible that the complainants would have seen each other four to five times before leaving the country, in particular after the alleged searches. Similarly, it is implausible that the second complainant would have stayed at home until the very moment of departure.

4.11 The State party submits that during the first asylum proceedings, the first complainant declared he had applied for a visa to a Swiss representation in Tunisia after the search of 18 September 2000. However, it follows from his visa application that he had planned to visit Switzerland for professional reasons since August 2000. In addition, some professional references are dated 18 September 2000, when the search took place. Therefore, the domestic authorities concluded that the complainant had been at his workplace on the dates when he would have been apprehended. Furthermore, if the complainant had indeed feared being arrested by the police, he could have filed his application for asylum directly with the Swiss representation, which he had visited twice. The State party underlines that the complainant applied for asylum a week after his arrival in Switzerland.

4.12 The State party notes that the domestic authorities considered that the summons to the Ministry of the Interior provided during the first asylum proceedings, independently of the question of the authenticity of the document, did not testify to the fact that the first complainant had been summoned for the reasons alleged. Furthermore, he had not explained how he had obtained the summons, which had been issued a day prior to the interview at the Ministry. Hence, the domestic authorities found that the document was not pertinent.

4.13 The State party further submits that the complainants' accounts made during the first and the second asylum proceedings with regard to the political activities which had prompted their first departure from Tunisia diverged on essential points. As a consequence, the domestic authorities doubted the veracity of the grounds invoked by the complaints in support of their second application for asylum. For instance, during the first asylum proceedings, the first complainant asserted that he had founded, with two friends, a group to support the families of political prisoners; and that the group acted on its own and had no name. During the second asylum proceedings, the second complainant asserted that he had been a member of Ennahda for over two years before his first departure from Tunisia. Similarly, during the first asylum proceedings, the complainants claimed two visits by the police, one to their house and the other to the second complainant's shop. During the second asylum proceedings, the second author claimed that before their departure in October 2000, the authorities had paid a number of visits to their house and inquired about the first complainant.

4.14 The State party notes that the domestic authorities found that the complainants' accounts as to the problems with the Tunisian police were conflicting. Thus, the first complainant stated that, apart from the two summonses to the Ministry of the Interior, the police had visited the house regularly and taken him to the police station within a period of two months. On the other hand, the second complainant stated that the police had noted that her husband was ill, after interrogating him for the first time upon their repatriation to Tunis and had not bothered him since. She also stated that the police had frequently visited their house in order to check if the first complainant was there; they had not taken him anywhere. Such visits had started upon their return to Tunisia, in December 2006 and ended a month before their departure in September 2007. The first complainant argued that the conflicting statements were due to a misunderstanding. The second complainant subsequently stated that she could have been absent from the home when the police had taken her husband to the police station and that he had not told her of being interviewed by the police as he did not want to worry her. The domestic authorities were not convinced by these arguments.

4.15 The State party submits that, independently of the divergent accounts given by the complainants, the essential aspects of their statements go against all logic and general experience. Thus, if the first complainant had indeed been targeted by the Tunisian authorities, he would have never been able to obtain a passport and leave Tunisia, legally and with no difficulty, by land. The State party does not find it credible either that the complainant, if he feared arrest or harm, would have remained in Tunisia for about four months after obtaining, in April 2007, the passport which facilitated his departure from the country.

4.16 The State party further submits that, as established by the domestic authorities, the summonses provided by the complainants are not decisive. Their authenticity cannot be established. The complainants' explanation that the originals were taken away by the Tunisian authorities after the interviews is not compelling, to the extent that is contrary to usual practice. In light of the above, the State party endorses the grounds adduced by the Federal Office for Migration and the Federal Administrative Court regarding the lack of credibility of the first complainant's allegations. It notes that the complainant's claim that he would face the risk of torture if returned is not supported by evidence and lacks substantiation.

4.17 With regard to the first complainant's health condition, the State party notes that it is not a criterion to establish, within the meaning of article 1 of the Convention, whether there are substantial grounds to believe that he would face the risk of torture, if returned. Furthermore, in light of the Committee's jurisprudence, the aggravation of the condition of an individual's physical or mental health by virtue of deportation is generally insufficient, in the absence of additional factors, to amount to degrading treatment in violation of article 16 of the Convention.[6] The State party notes that the first complainant submitted to the domestic authorities a number of medical reports to show that he was suffering from chronic hepatitis C, tuberculosis and depression. The domestic authorities established that on the one hand, his depression was linked to the rejection of his asylum applications and that on the other hand, his psychological problems could be treated in Tunisia. Hepatitis C, which can only be cured in 40 per cent of cases and which has a high prevalence in Tunisia, can also be treated there. The two medicines prescribed to the complainant, as well as their substitutes, are available on prescription in Tunisia. In addition, the complainants could count on their family network when they were repatriated in December 2006. Owing to their business activities in the past, they could certainly have built a social network in Tunisia which could be revived upon their return.

4.18 The State party submits that, in light of the foregoing, there are no substantial grounds to fear that the complainants would be concretely and personally exposed to torture if returned to Tunisia. Their allegations and evidence provided do not lead to the consideration that their return would expose them to a foreseeable, real and personal risk of torture. The State party, therefore, invites the Committee to find that the return of the complainants to Tunisia would not constitute a violation of the international obligations of Switzerland under article 3 of the Convention.

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[6] See, for instance, communication No. 227/2003, *A.A.C. v. Sweden*, Views adopted on 16 November 2006, para. 7.3.

The complainants' comments on the State party's observations

5.1 On 11 June 2012, the complainants commented on the State party's observations. They disagree with the State party's arguments that, since the changes of January 2011, Tunisia has pursued a democratic transition and that there has recently been no civil war or generalized violence. They argue that despite the overthrow of President Ben Ali and the political changes in Tunisia, the human rights situation in the country remains unstable and its political future is very uncertain. Protests and strikes break out regularly. Opposition groups involved in toppling Ben Ali suspect that some members of the interim Government sympathize with the ousted administration and that the revolution was only possible due to support from the former regime, especially the security forces. The complainants further argue that many of the judges appointed by Ben Ali retained their positions after the overthrow and that the current Government use disproportionate and excessive force to quell the protests. They submit that uncertainty as to whether supporters of Ben Ali will regain power exposes them to a real risk of being tortured upon return. They add that the political changes do not mean that Tunisia is a safe country for former opponents of the regime.

5.2 The complainants further challenge the State party's argument that the summonses provided were not authentic and that interviewing returning long-term residents from abroad is commonplace. They submit that the original documents were kept by the authorities after the interviews. The State party's assertion that such a practice is unusual is unsubstantiated. Furthermore, the State party has failed to demonstrate that these documents are fake and this does not appear from the face of the documents. The complainants submit that they have discharged the burden of presenting an "arguable case", sufficient to require a response based on concrete evidence from the State party, rather than general assumptions or bare assertions.[7] They further argue that the State party has provided no evidence that interviewing returnees is commonplace, despite the summonses issued to the complainants after such interviews, which showed that the Tunisian authorities were highly interested in the complainants and intended to punish them. The State party has thus failed to make sufficient efforts to assess the risk for the complainants of being subjected to torture in case of forcible return. Furthermore, given that they fled the country after a warning not to do so and that they were interrogated thoroughly and at length after their repatriation in 2006, such a risk is real. The fall of the former President does not guarantee their safety as they have outstanding summonses in their name and the current Government reportedly resorts to excessive force.

5.3 With regard to the State party's argument concerning the lack of credibility of the complainants' accounts due to inconsistencies in their statements, the first complainant reiterates that he did not inform his spouse of having been taken to the police station in her absence for "cultural reasons" and because he wanted to ease her suffering. The complainants also reiterate that they travelled on fake passports and had to bribe officials in order to flee. Furthermore, they did not leave the country by air but by land, which involved crossing the Libyan border illegally, in a taxi. The fact that they were able to leave Tunisia does not mean that they are not wanted by the authorities.

5.4 The first complainant adds that his health is very poor. He reiterates that he suffers from depression and chronic hepatitis C and used to suffer from tuberculosis and notes that this was acknowledged by the Swiss authorities. A prolonged prison sentence would certainly put his life at a serious risk. It must be assumed that he would face inhuman and degrading treatment in such a case. He further challenges the State party's argument that hepatitis C can be treated in Tunisia and notes that even if he is not imprisoned, there is a high risk that the required medical treatment would be unavailable or inaccessible there, given the current political uncertainty in the country.

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[7] See para. 5 of general comment No. 1.

5.5 The complainants argue that they have presented an "arguable case" and that the State party has failed to make sufficient efforts to assess whether there are substantial grounds for believing that they would be in danger of being subjected to torture, if returned. They submit that such grounds remain valid.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering a claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5(a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee recalls that, in accordance with article 22, paragraph 5(b), of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that in the instant case the State party has recognized that the complainants have exhausted all available domestic remedies. As the Committee finds no further obstacles to admissibility, it declares the communication admissible.

Consideration of the merits

7.1 In accordance with article 22, paragraph 4, of the Convention, the Committee has considered the present communication in the light of all the information made available to it by the parties concerned.

7.2 The issue before the Committee is whether the removal of the complainants to Tunisia would violate the State party's obligation under article 3 of the Convention not to expel or to return (*refouler*) a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee must evaluate whether there are substantial grounds for believing that the complainants would be personally in danger of being subjected to torture upon their return to Tunisia. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would return.

7.3 The Committee recalls its general comment No. 1, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being "highly probable" (para. 6), the Committee notes that the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a "foreseeable, real and personal" risk.[8] The Committee further recalls that in accordance with its general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned,[9] while at the same time it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

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[8] See, inter alia, communications No. 203/2002, *A.R. v. Netherlands*, decision adopted on 14 November 2003; and No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November 2005.

7.4 The Committee notes that the State party has drawn its attention to perceived factual inconsistencies in the complainants' accounts. The Committee also takes note of the comments presented by the complainants on the State party's observations. It considers, however, that these inconsistencies do not constitute an obstacle for the Committee's assessment of the risk of torture in case of their removal to Tunisia.

7.5 First, the Committee notes the first complainant's argument that he would be at risk of persecution if returned to Tunisia, as he had financially assisted the families of political prisoners and supported Ennahda in Tunisia, prior to his arrival in Switzerland in 2000, where he attempted to establish contact with an Ennahda representative In this context, the Committee observes that the political regime in Tunisia has changed since the complainants' departure from the country. In particular, the former president, in power since 1987, resigned on 14 January 2011, whereas Ennahda holds a majority of seats in the Tunisian Constituent Assembly as a result of the parliamentary elections of October 2011. In addition, the Committee takes note of the low-level nature of the first complainant's political activities in Tunisia but also in Switzerland, and of the existing inconsistencies in the complainants' accounts regarding his repeated questioning at the police station and the frequency of police visits to their house in Tunisia. It observes in this regard that the complainants have failed to furnish sufficient evidence to support the claim that they were arrested and interrogated in connection with the first complainant's political activities and not merely because they left Tunisia in 2000. As to the complainants' allegation that they would be arrested and interrogated upon return, in the circumstances of the case, the Committee recalls that the mere risk of being arrested and interrogated is not sufficient to conclude that there is also a risk of being subjected to torture.[10]

7.6 The Committee further notes that the complainants have not claimed before the State party's asylum authorities or the Committee that any charges, namely on account of the first complainant's political activity, have been brought against them under Tunisian law. It also notes that apart from the summonses issued over 6 years and 10 months ago, the authenticity of which is disputed by the State party, they have submitted no other evidence suggesting that the Tunisian authorities have been looking for them since their departure and that they would face a foreseeable, real and personal risk of being tortured or subjected to inhuman and degrading treatment.[11]

8. In light of the above considerations, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the decision of the State party to expel the complainants to Tunisia would not constitute a violation of article 3 of the Convention.

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[9] See, inter alia, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010, para. 7.3.

[10] Communication No. 57/1996, *P.Q.L. v. Canada*, Views adopted on 17 November 1997, para. 10.5.

[11] The Committee also notes that it has not been alleged by the complainants that members of Ennahda are subjected to treatment contrary to article 3 of the Convention.

Communication No. 441/2010: *Evloev v. Kazakhstan*

Submitted by:	Mr. Oleg Evloev (represented by the Kazakhstan International Bureau for Human Rights and Rule of Law)
Alleged victim:	The complainant
State party:	Kazakhstan
Date of complaint:	20 December 2010 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 5 November 2013,

Having concluded its consideration of complaint No. 441/2010 submitted to the Committee against Torture on behalf of Mr. Oleg Evloev under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1. The complainant is Oleg Evloev, a Kazakh national born in 1980. He claims to be a victim of violations by Kazakhstan[1] of his rights under articles 1, 2, 12, 13, 14 and 15 of the Convention against Torture. He is represented by the Kazakhstan International Bureau for Human Rights and the Rule of Law.[2]

The facts as presented by the complainant

2.1 On 21 October 2008, around 8 p.m., a mother and her three minor children were murdered in their home in Astana. On 22 October 2008, around 5 p.m., one D.T. was questioned by the Internal Affairs Department of Astana as a witness in this context. Around 10 p.m., D.T. was brought to the Internal Affairs Department of the Almaty District, where he was subjected to beatings in order to force him to confess his guilt in the murders. On 24 October 2008, he was again interrogated and subsequently arrested as a murder suspect. On 27 October 2008, D.T. wrote two statements in which he confessed to having committed the murders together with the complainant. D.T. retracted his statements on 2 November 2008 and 5 January 2009, claiming that he was forced to write them under psychological pressure and under torture by police officers.

2.2 Based on D.T.'s confession, an international arrest warrant was issued against the complainant and he was arrested on 29 October 2008 in the Chechen Republic of the Russian Federation. On 8 December 2008, he was extradited to Kazakhstan to be prosecuted for murder. He travelled by plane to Astana, accompanied by Kazakh police officers. On the way the airplane stopped twice for refuelling, in Atyrau and in Aktobe. On both occasions the complainant was taken to the airport premises and was subjected to humiliation by the officers. For instance, his hands were handcuffed behind his back and he was forced to kneel and eat food off a plate. When he refused, the officers pushed his face into the plate, pushed him to the floor and took pictures of him with their mobile phones.

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[1] The State party made the declaration under article 22 of the Convention against Torture on 21 February 2008.

[2] A power of attorney, dated 24 November 2009 and signed by the complainant, is attached to the complaint.

2.3 In Astana, the complainant was placed in the temporary detention centre of the Department of Internal Affairs and subjected to torture to force him to confess his guilt in the murders. In particular, at least six police officers hit him in the area of his kidneys; threatened him with sexual violence; tied his hands and forced him to lie on the floor; put a gas mask on his head, repeatedly interrupting the air flow, causing him to choke; and inserted hot needles under his nails. They also showed him photos of his father and claimed that he had also been detained and tortured. The above treatment continued until the morning of 10 December 2008, when the complainant produced two written confessions. On 10 December 2008, the complainant was examined by a forensic medical expert, as he alleged that on 9 December 2008, four police officers had beaten him, hit him in the area of his head and suffocated him with a gas mask. The expert confirmed that he had numerous injuries, consistent in time with his allegations of ill-treatment.[3]

2.4 On 10 December 2008, the complainant was brought before the prosecutor supervising the criminal case. The complainant complained of having been tortured and showed the prosecutor the marks of violence on his body. However, the prosecutor did not take any measures to investigate the allegations, but simply extended the detention of the complainant by a further 70 days. After the meeting with the prosecutor, the methods of torture used became more sophisticated, as the police officers were aiming to leave fewer marks on the complainant's body. Thus, he was handcuffed naked by an open window in extremely cold temperatures and forced to stand with his legs wide apart and his head against the wall, until he collapsed from exhaustion. He was beaten over the head and the soles of his feet with a full two-litre plastic water bottle, deprived of sleep and placed repeatedly in a "glass", a 50 by 50 centimetre concrete cell without windows or other openings. As a result he had injuries to his head, broken ribs and a fractured left foot. He was denied medical assistance. The complainant maintains that his ill-treatment lasted until 17 February 2009, when he was transferred to another detention facility.

2.5 The complainant, his attorney and his parents submitted numerous complaints regarding the ill-treatment to the Prosecutor's Office and the courts, as well as to other authorities, none of which were examined on their merits. In particular, the complainant complained to a prosecutor during an interrogation on 10 December 2008 and again to the same prosecutor during an interrogation, in the presence of his lawyer, on 16 December 2008. On 21 January 2009, the complainant's father submitted a written complaint to the Astana City Prosecutor's Office regarding the ill-treatment of his son. On 18 May 2009, the complainant's mother submitted another complaint in this respect to the Internal Security Department of the Ministry of Internal Affairs. On 22 May 2009, the complainant's attorney requested the Prosecutor's Office of Astana city to provide him with a copy of the formal refusal to open an investigation into the allegations of torture. A copy of the decision by an investigator of the Internal Security Division of the Department of Internal Affairs of Astana, dated 8 June 2009 and approved by the Head of the Prosecutor's Office of Astana, was not provided until 26 June 2009, one week after the complainant was found guilty of murder. On an unspecified date in 2009, the decision of 8 June 2009 was appealed on behalf of the complainant by his parents to the prosecutor K.V. of the Prosecutor's Office of Astana city, who also refused to open an investigation. In all cases, the authorities refused to open an investigation into the allegations of torture.

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[3] Forensic medical examination report No.3393 of 10 December 2008. The Chief Investigator of the Division of Internal affairs of the Investigation Department was ordered to perform a forensic medical examination of the complainant. The complainant was examined on the premises of the Akmolinsky Branch of the Forensic Medical Centre. The expert concluded that the complainant had injuries to his wrist and an injury to the left side and to the middle part of his head. Those injuries had been caused with a hard object less than 24 hours earlier. The expert also established injuries to his chest and to the lower part of his left leg, caused by a rounded object one to three days earlier.

2.6 During the complainant's trial before the Astana City Court and the second instance Supreme Court, the complainant's allegations of torture were not taken into consideration. No one was ever held accountable for the torture inflicted on the complainant and he never received compensation or rehabilitation after being tortured. Throughout the trial he was denied unimpeded communication with his defence attorney and visits from his parents. On 16 June 2009, the complainant was declared guilty of the four murders and sentenced to life imprisonment. His appeal to the Supreme Court was rejected on 10 November 2009, as it found the judgment of the court of first instance to be lawful and the complainant's arguments groundless. In addition, the complainant submits that lodging a complaint before the Supreme Court within the supervisory review proceedings concerning the fact of his torture would have been futile, as D.T., who was convicted together with the complainant, had submitted such a complaint, but it was left without examination. Consequently, the complainant maintains that he has exhausted all the available domestic remedies.

The complaint

3.1 The complainant claims that his rights under article 1 of the Convention were violated by the State party, since he was tortured by State officials to force him confess his guilt in a multiple murder.

3.2 He further claims that his rights under article 2 of the Convention were violated, as the State party did not take effective administrative, judicial or other measures to prevent the acts of torture against him either during the extradition process, or while he was in pretrial detention.

3.3 He claims to be a victim of a violation of his rights under articles 12 and 13 of the Convention, since the State party authorities failed to conduct a prompt and impartial investigation into his allegations of torture.

3.4 The complainant also claims that his rights under article 14 of the Convention were violated, as the authorities did not offer him redress and adequate compensation, including rehabilitation.

3.5 Finally, he claims to be victim of a violation of his rights under article 15 of the Convention, because the courts retained his forced confessions when establishing his guilt in a crime.

The State party's observations on admissibility

4.1 By a note verbale of 10 March 2011, the State party challenged the admissibility of the complainant's communication for non-exhaustion of domestic remedies.

4.2 The State party explains that on 23 October 2008, the complainant was accused, in absentia, for murder of four persons in Astana on 22 October 2008. On the same day, court No. 2 of the Almatinsk District of Astana authorized the complainant's arrest. As it transpired that the complainant had left Kazakhstan in the meantime, an international arrest warrant was issued against him. As a result, he was arrested in the Republic of Ingushetia (Russian Federation) and extradited to Kazakhstan on 9 December 2008.

4.3 On 16 January 2009, the complainant was charged under articles 96 (2), 179 (3) and 185 (2) of the criminal code of Kazakhstan for premeditated murder of two or more individuals in a helpless state, committed with selfish aims, in a group, with particular violence, with the aim of concealing another crime; robbery with the aim of acquiring others' property in an important amount; and unlawful appropriation of a means of transportation. On 27 February 2009, his case was brought to court. On 16 June 2009, a jury of the Astana City Court found the complainant guilty under articles 96 (2), 179 (3) and 185 (2) of the criminal code. The complainant was sentenced to life imprisonment. At the same trial, the complainant's co-accused, D.T., was sentenced to 25 years imprisonment with confiscation of property. The State party explains that the complainant's guilt was established on the basis of a multitude of corroborating pieces of evidence collected during the preliminary investigation, assessed in court and recognized as lawfully obtained.

4.4 In June 2009, the complainant appealed against his conviction to the Supreme Court, claiming that he was convicted unlawfully. In November 2009, the Supreme Court upheld the decision of the court of first instance and rejected the complainant's appeal. The State party maintains that the complainant failed to file an application for supervisory review to the Supreme Court and therefore has not exhausted all domestic remedies.

4.5 As to the complainant's allegations of torture, the State party submits that in 2009 the complainant's parents, through the complainant's current counsel, complained of the unlawful conviction of their son and the use of unlawful methods of investigation to the Astana District Prosecutor's Office and to the Astana City Prosecutor's Office. The complainant complained to the Ministry of Internal Affairs of Kazakhstan, claiming that during the preliminary investigation, he was subjected to physical and psychological pressure by officers of the Department of Internal Affairs of Astana. The Internal Security Division of the Department of Internal Affairs of Astana carried out an investigation into these allegations, but decided not to initiate criminal proceedings due to lack of *corpus delicti* in the officers' acts. This decision was verified by the supervising prosecutor of the Prosecutor's Office of Astana and was confirmed. Neither the complainant nor his family or legal counsel appealed against the prosecutor's refusal to annul the decision not to initiate criminal proceedings, although an appeal against such decision was possible with a higher prosecutor and in court. Therefore, the complainant has failed to exhaust all available domestic remedies.

4.6 The State party notes that under article 22, paragraph 5 (b), of the Convention, the Committee may not consider a complaint unless it ascertains that all domestic remedies have been exhausted. Article 460 of the criminal procedure code (right of appeal against a court sentence, ruling and resolution which have entered into force) provides that an application for review of a court decision which has entered into force may be filed by the parties in the proceedings who have the right to lodge an appeal and a cassation appeal and thus the complainant could and still can do so.

4.7 The State party rejects the complainant's contention that, for him, initiation of supervisory review proceedings is futile, since such an application submitted by his co-accused, D.T., also containing allegations of torture, was rejected by the Supreme Court. The State party finds this argument unfounded, as the refusal by the court to request a supervisory review as a result to D.T.'s application in no way means that the complainant's appeal would also be rejected, if lodged. The complainant can request examination of his case under the supervisory review of his case by the Supreme Court, as provided for under article 576 of the criminal procedure code. In case of a negative response, he could appeal to the General Prosecutor's Office with an application for a supervisory review of court decisions already in force, in accordance with article 460 of the criminal procedure code.

4.8 In conclusion, the State party emphasises the complainant's failure to: (a) submit an application for supervisory review with the Supreme Court; (b) appeal to the General

Prosecutor's Office or in court against the refusal of the city prosecutor of Astana to initiate criminal proceedings into his torture claims; (c) complain to the General Prosecutor's Office with a request for a protest motion regarding the re-examination of the court rulings that have already entered into force under the supervisory review proceedings and therefore he has not exhausted all available domestic remedies.

The complainant's comments on the State party's observations

5.1 On 22 April 2011, the complainant provided his comments on the State party's submission. He reiterates the facts of the case and recalls that on 8 December 2008, he was extradited from the Chechen Republic, and he arrived in Astana early on 9 December 2008. He was humiliated prior to and during his extradition by Kazakh officials. In the temporary detention centre of the Ministry of Internal Affairs in Astana, he was tortured during his interrogation by police officers and forced to produce written confessions to a multiple murder. As a result of the torture he suffered, the complainant received injuries to his head, had broken ribs and a fractured left foot.

5.2 The complainant refutes the State party's assertion that a complaint regarding his ill-treatment was submitted by his parents only in 2009 and recalls that he first complained about torture to a prosecutor on 10 December 2008, the day following his ill-treatment, and that he showed the marks of torture on his body to the prosecutor during an interrogation which was videotaped.[4] However, instead of verifying the complainant's claims, the prosecutor extended his detention in the temporary detention centre for 70 days, thus giving police officers 24-hour access to the complainant.

5.3 On 16 December 2008, in the presence of his lawyer, the complainant complained about the torture he had suffered during an interrogation by the prosecutor supervising his criminal case. In January 2009, in light of the passivity of the authorities, the complainant's parents laid a complaint before the Astana city prosecutor, however it was forwarded to the Internal Security Department of the Ministry of Internal Affairs. According to the complainant, this demonstrates the failure of the authorities to conduct a proper investigation into his complaint of torture.

5.4 According to the complainant, an investigation into his allegations of torture was carried out, at the request of his parents, only six months after his own complaint of 10 December 2008. His numerous complaints regarding the torture endured have not been assessed by the court of first instance during his trial which started in March 2009, as the judge prohibited the complainant from speaking about torture in the presence of the jury. At the same time, however, the court based its decision on evidence obtained under duress, in particular on the complainant's written forced confessions. On 18 May 2009, losing any hope that the courts would consider investigating her son's allegations of torture, the complainant's mother filed a petition directly with the Department of Internal Security of the Ministry of Internal Affairs, requesting the conduct of a prompt and thorough investigation. Her complaint was forwarded to the Internal Security Division of the Department of Internal Affairs of Astana on 21 May 2009. On 22 May 2009, the complainant's lawyer requested the Astana city prosecutor to issue a ruling on the refusal to investigate the complainant's complaint of torture.

5.5 After having conducted an investigation, the Internal Security Division refused to initiate criminal proceedings against the police. The complainant claims that the investigation carried out by the authorities, six months after the submission of his first complaint, was not prompt, independent, impartial, thorough or effective, as is required under the Convention. He stresses that no verification of his initial complaint of 10 December 2008 was carried out, the only verification being conducted six months later, following his parents' complaints.

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[4] The complainant contends that he told the prosecutor that he was forced and tortured, that he has injuries to the thorax and the head, that he was prevented from sleeping and was subjected to psychological pressure.

5.6 The complainant further claims that he was only provided with a copy of the decision of 8 June 2009, by which the Internal Security Division of the Department of Internal Affairs of Astana refused to initiate criminal proceedings against the officers who had tortured him, after the pronouncement of his sentence by the Astana City Court on 16 June 2009. He claims that this was done on purpose, to avoid him appealing against this decision directly during the trial.

5.7 He reiterates that all domestic remedies have been exhausted, contending that the remedies invoked by the State party are ineffective. In substantiation, he notes that the supervisory review proceedings with the Supreme Court or the General Prosecutor's Office are discretionary and exceptional in nature, as they cannot be initiated by the complainants themselves but that a judge or a prosecutor must request or not the review of a case under the supervisory review proceedings, even without consulting the case file.

5.8 The complainant emphasizes that his allegations of torture were not examined by the Astana City Court or on appeal by the Supreme Court, despite his repeated requests, which also shows the failure of the authorities to adequately address his claims of torture. His sentence of life imprisonment pronounced on 16 June 2009 entered into force on 10 November 2009, after the decision of the Supreme Court. None of the courts dealt with his allegations of torture, which demonstrates that domestic remedies were both unavailable and not effective.

5.9 The complainant adds that it was possible to submit an appeal against the refusal of the investigator of the Internal Security Division of the Department of Internal Affairs of Astana to initiate criminal proceedings on the allegations of torture only in the context of the appeal against the judgment of the Astana City Court.

5.10 In this connection, he points out that, according to article 103 of the criminal procedure code, all complaints relating to a criminal case, irrespective of their addressee are forwarded for action by the court which is examining the criminal case. In the present case, however, the courts examining the complainant's criminal case failed to assess the complainant's allegations of torture. He also notes that in its judgement of 4 October 2011 on application No.10641/09, *Ushakov v. Russian Federation*, the European Court of Human Rights stated that the final decision is considered to be that of the final court and not the decision on the refusal to initiate criminal proceedings, since further appeals on torture are meaningless. For this reason, no obligation to lodge additional appeals against the refusal to open a criminal case on torture with courts or a prosecutor (in addition to the appeal complaint against the judgments of the court of first instance) exists, for purposes of exhaustion of domestic remedies.

5.11 As to the supervisory review proceedings, the complainant maintains that the rejection by the Supreme Court of the appeal under the supervisory review proceedings of D.T., who was convicted together with the complainant in the same criminal case and who also claimed to have been tortured in his complaint, demonstrates the ineffectiveness of such proceedings.[5]

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[5] In this connection, the complainant points out that before the judgment entered into force, the national authorities and, in particular, the Chairman of the supervisory review body of the Supreme Court, referred to the complainant as a "convict", thus violating the principle of presumption of innocence and demonstrating the ineffectiveness of the supervisory proceedings.

5.12 The complainant adds that the passivity of the national authorities in not considering and investigating his allegations of torture represents a strong argument against the effectiveness of domestic remedies. He reiterates that only effective remedies must be exhausted.

5.13 The complainant further submits that the possibility of lodging complaints with the Prosecutor's Office does not represent an effective domestic remedy. The State party argues that he failed to appeal to the General Prosecutor's Office against the refusal of the prosecutor to initiate criminal proceedings. In the complainant's opinion, a representative of the General Prosecutor's Office was present during the consideration of his appeal by the Supreme Court in any event. However, the Prosecutor's Office did not consider his allegations of torture and did not initiate any investigation of them. This confirms the ineffectiveness of submitting complaints to the General Prosecutor's Office. The complainant also complained about torture to the District Prosecutor on 10 December 2008 and subsequently to the Astana City Prosecutor's Office (which on 26 June 2009 upheld the refusal of 8 June 2009 of the Department of Internal Security of the Department of Internal Affairs of Astana to initiate criminal proceedings against police officers involved in his ill-treatment), as well as to the representative of the General Prosecutor's Office who was present when his appeal was examined by the Supreme Court. The failure of the authorities to address his allegations of torture undermined the complainant's hope of getting redress at national level by way of a complaint submitted to the General Prosecutor's Office.

5.14 Moreover, and with reference to the case law of the Human Rights Committee, the complainant notes that the State party has not demonstrated that supervisory review proceedings before the Supreme Court and the General Prosecutor's Office, as domestic remedies, are not only provided by law but are also available and effective, both in theory and in practice.

5.15 The complainant adds that his family has received threats from police officers and from family members of the murdered mother and her three children.

5.16 Finally, he submits that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment visited him and the complainant informed him of the ill-treatment he had suffered and this was reflected in the official report of the Special Rapporteur on his mission to Kazakhstan.[6]

State party's observations on merits

6.1 On 9 September 2011, the State party provided its observations on the merits. It recalls the facts of the case (see paras. 4.2–4.3 above) and stresses that it has provided the Committee with enough arguments on the inadmissibility of the communication.

6.2 The State party adds that complainant's alleged ill-treatment during his extradition in 2008 was duly investigated and found to be without grounds. On 9 December 2008, upon his arrival at the temporary detention centre of the Internal Affairs Department in Astana, the complainant was examined by a medical doctor of the centre and, according to the records in the journal of medical assistance and in the record of his interrogation, no injuries were found on him and he formulated no complaints whatsoever. The complainant was represented by professional attorneys throughout the pretrial investigation and during the trial.

6.3 During his interrogation on 9, 10 and 21 December 2008, as well as on 8 January 2009 (with his counsel absent on 10 December), the complainant confessed, freely, to having murdered the family of A.E. (four persons in total) and a robbery. On 10 December 2008, the complainant was interrogated from 2.30 to 4.20 p.m. and he confessed his guilt. Later in the evening, however, when he was again interrogated (from 5.13 to 6.05 p.m.), he declared that he had confessed his guilt under torture. On the same day, at 8 p.m. a forensic medical examination was performed on the complainant and an injury to his head was found. An investigation was carried out concerning this fact and on 21 December 2008, the Department of Interior Affairs of Astana City concluded that the injury was caused by the fact that the complainant accidently hit his head against roof of the police car while getting inside during his transportation. Thereafter, a number of additional forensic medical examinations were performed on the complainant, but no injuries were revealed. In addition, during the interrogations on 16, 18 and 21 December 2008 and on 8 January 2009, the complainant confessed his guilt.

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[6] A/HRC/13/39/Add.3, para. 59 and appendix, paras. 116 and 117.

6.4 The State party maintains that the allegations of torture by the complainant and his family were based only on the complainant's own statements and the examination of those complaints did not produce objective evidence demonstrating that he had indeed been subjected to torture. In fact, the complainant had never indicated concretely the circumstances of his alleged ill-treatment and never specified by whom, when and where exactly he had been subjected to torture. Consequently, on 8 June 2009, the investigator of the Internal Security Division of the Department of Internal Affairs of Astana refused to initiate a criminal case into the complainant's allegations. As to the fact that notification of this decision was received by the complainant's mother only on 26 June 2009 (that is after he was convicted by the court of first instance on 16 June 2009), the State party submits that the complainant, as well as his attorney could have requested the court during the hearing to order the prosecution to produce the said decision. In addition, all the complaints of the complainant and his parents concerning the alleged ill-treatment were duly examined by the competent authorities. Moreover, the complainant's allegations were also addressed by the national court during his trial before the court of first instance in the absence of a jury, pursuant to article 562, paragraph 5, of the code of criminal procedure, as well as by the Supreme Court and a prosecutor, when his appeal was examined. However, his allegations were found to be unfounded. The complainant's allegations were examined within the time limits set in national legislation (article 184 of the criminal procedure code).

6.5 As to the complainant's statement that the investigation into his allegations of torture was initiated only after his parents' complaint of January 2009 and not following his oral complaint to the prosecutor on 10 December 2008, the State party reiterates that following the complainant's claim of 10 December 2008, a forensic medical examination was performed on him. Taking into account the results of the examination, an internal investigation was carried out, but the complainant's allegations were found to be groundless (see para. 6.3 above).

6.6 The State party reiterates that the complainant has failed to exhaust all available domestic remedies concerning his allegations of torture, as he has not availed himself of the remedy under articles 460 and 576 of the criminal procedure code, i.e., he has not submitted a complaint to the Supreme Court within the supervisory review proceedings. Under article 460 of the code, only parties to the proceedings may challenge a judgment which has entered into force within appeal/cassation proceedings. Consequently, the complainant or his lawyers could and still can challenge the judgment of the court before the Supreme Court. Under article 464 of the code, following a preliminary examination, the court adopts a decision either on the initiation of supervisory review proceedings or on their refusal, or to return the complaint. In this regard, it points out that such a decision is adopted collegially by three judges and not by the Chair of the Supreme Court. As to the complainant's argument that submitting a complaint to the Supreme Court within the supervisory proceedings would have been in vain, as D.T.'s request was unsuccessful, the State party observes that each complaint regarding supervisory proceedings is examined separately without consideration of the outcome of other examinations. Moreover, even if the complainant was referred to as a "convict" by a Supreme Court judge, nothing indicated that he was prevented from submitting a complaint within the supervisory proceedings. In addition, the State party disagrees that submitting a complaint to the Supreme Court would have been an ineffective remedy. It points out that in 2010, 48 persons were acquitted in the framework of the supervisory review proceedings, while during the first half of 2011, 13 persons were acquitted.

6.7 The State party adds that the domestic investigation met the requirements of promptness, independence, impartiality, thoroughness and effectiveness, as required by the Convention. The investigation was carried out in accordance with national legislation. The preliminary examination of the complainant's claims of torture was later examined by a prosecutor. The prosecutor found the complainant's allegations groundless. In this connection, the State party notes that neither the complainant nor his lawyers appealed against this decision. In any case, the very fact that the Prosecutor's Office refused to initiate criminal proceedings concerning the complainant's claims of torture does not demonstrate that his complaint was not examined objectively. Furthermore, all investigative actions within the pretrial investigation were carried out in the presence of the complainant's lawyer and all evidence was obtained in accordance with national law. Forensic medical examinations were performed on the complainant, the results of which did not demonstrate that the complainant had been subjected to torture. The State party points out that according to forensic examination report No. 2416 of 19 December 2008, in which his handwriting was examined, it could not be established that the complainant's written confessions were made under any extraordinary circumstances and nothing indicated that he had written that statement while being in an extraordinary psychological state. The State party believes that the complainant's allegations that he had been subjected to torture constituted a defence strategy aimed at obstructing the investigation of the crimes he had been accused of.

6.8 The State party also points out that the results of the internal investigation concerning the complainant's allegations of torture were examined, inter alia, by the court of first instance. During the trial, the forensic medical experts confirmed that they had not received any complaints from the complainant regarding his alleged ill-treatment by the police and confirmed that he had no injuries. The State party also notes that during the trial, law enforcement officers and experts who had examined the complainant were questioned regarding his allegations. It adds that the appeal court also examined the complainant's allegations, but found them unjustified. In this connection, it recalls that the courts are independent and guided only by the constitution and the laws and that the complainant's case was adjudicated in accordance with these principles. The State party also notes that the complainant was not present when his appeal was examined, pursuant to article 408, para. 2, of the criminal procedure code. However, he was duly represented by a lawyer.

6.9 It further explains the procedure for submitting complaints concerning decisions and actions of the investigator, prosecutor, court or judge as set out under articles 103 and 109 of the criminal procedure code. It points out that pursuant to article 105 of the code, complaints about decisions or actions of investigators are to be submitted to the prosecutor supervising the case, while complaints about decisions or actions of the prosecutor are to be submitted to a higher prosecutor. Moreover, if a person's rights have been violated due to prosecutors' or investigators' refusal to initiate criminal proceedings, the person concerned can complain to a court under article 109 of the criminal procedure code. However, if a criminal case has already been brought to court, pursuant to article 284 of the code, all complaints regarding that case are to be submitted to the court examining that case.

6.10 The State party describes in detail how and by what evidence the complainant's guilt was established, and explains that the principle of presumption of innocence has been observed in his case.

6.11 As to the effectiveness of domestic remedies, in particular complaining to courts and to the General Prosecutor's Office, the State party notes that under the provisions of the constitution and the national laws, a citizen has a right to legal protection against any infringement of his or her rights. According to article 83 of the constitution, the Prosecutor's Office supervises the actions of, inter alia, investigators and investigative authorities to ensure that they are lawful. Any complaint alleging unlawful means of investigation is duly verified by the Prosecutor's Office.

6.12 In light of the above considerations, the State Party maintains that the complainant's rights under articles 1, 2, 12, 13, 14 and 15, of the Convention have not been violated in the present case.

Complainant's comments on the State party's observations

7.1 On 15 November 2011, the complainant submitted his comments on the State party's observations. He reiterates his previous submissions (see paras. 2.2–2.4 above) and comments. Regarding the State party's contention that his complaints of torture were duly examined on 24 December 2008 and 16 March and 8 June 2009, the complainant notes that in fact he was informed of only one decision – that of 8 June 2009, when an investigator of the Internal Security Division of the Department of Internal Affairs of Astana refused to initiate criminal proceedings into his allegations. The complainant, his parents and his lawyer were unaware of any other examinations of his claims of torture. He was never questioned regarding his claims of torture, even though he identified the police officers who had ill-treated him to the prosecutor who interrogated him on 10 December 2008, invoked the findings of the forensic medical examination report of 10 December 2008 and stated that his injuries could be seen on the video recording of his interrogations of 10 and 16 December 2008 (which, as it later transpired, got lost as per the police explanations). On the State party contention that one of the refusals to initiate criminal proceedings into his allegations was issued on 16 March 2009 by the Internal Inspectorate of the Department of Interior Affairs, the complainant explains that he did not know on what grounds such a decision was adopted or who approached the Inspectorate and notes that he learned about this decision only on 26 May 2009 in the context of a court hearing.

7.2 As to his statement admitting to having murdered the family of A.E. (see para. 6.3 above), he submits that he was coerced into giving this statement. He adds that the State party has not addressed his statement that, inter alia, the interrogation of 10 December 2008 was recorded on video, but that the video recording had later disappeared and notes that the State party has not commented on the results of forensic medical examination report No. 3393 of 10 December 2008 (see para. 2.3 above). Furthermore, he had refused the services of a lawyer appointed to him on the first day and the subsequent lawyer provided ex officio had only six months of professional experience and was not impartial. The complainant's requests to have another lawyer appointed to him were disregarded. In addition, he maintains that not all investigative actions were performed in the presence of his lawyer (e.g. when he was coerced into confessing his guilt). He reiterates that the judiciary in Kazakhstan is not independent and that the Prosecutor's Office has a dominating role. The courts did not examine his allegations of torture, as they perceived his complaints as a way of influencing the court in an attempt to avoid the investigation of his criminal liability.

7.3 The complainant adds that the State party has not commented on his argument that it was possible to submit an appeal against the refusal of 8 June 2009 by the Internal Security Division of the Department of Internal Affairs of Astana city to initiate criminal proceedings on his allegations of torture only in the context of the appeal against the judgment of the court of first instance. He notes that the State party constantly refers to numerous forensic medical examinations allegedly performed on him, but, with the exception of the forensic report concerning his statement in which he confessed his guilt, does not provide any information as to who, when and why such examinations were performed. The complainant emphasises that during one of the hearings, a forensic expert explained that he did not have enough samples of the complainant's handwriting to reach any concrete conclusion as to the circumstances under which he had produced his written confessions. The complainant also notes that he was examined by a medical doctor only shortly after his placement in the temporary detention centre. As to the State party's comments on the effectiveness of the procedure for submitting complaints concerning the decisions and actions of investigators, the prosecutor, the courts, etc. under articles 103, 105, 109 and 284 of the criminal procedure code, the complainant maintains that in his case, the procedures and requirements (inter alia, the time limits) prescribed in the those articles of the code were not observed by the national authorities.

7.4 The complainant further stresses that he never voluntarily confessed his guilt during the preliminary investigation or in court. He reiterates that during his trial before the courts of first and second instance, his allegations of torture were not taken into consideration. In this connection, he quotes in detail from the trial transcript his statements concerning the fact that he had been subjected to torture. He adds that the national courts were biased as they were influenced by numerous negative publications about him in the mass media (e.g. by the interviews given by different officials).

7.5 The complainant explains that the investigation of his complaints of torture is neither impartial nor objective, as the unlawful actions of the police officers of the Department of Internal Affairs of Astana were investigated by the same Department of Internal Affairs of Astana, while the Prosecutor's Office and the courts failed to ensure respect of the international principles of effective investigation. He further notes that from the State party's observations it appears that three decisions were adopted on the refusal to initiate criminal proceedings regarding his torture – on 21 December 2008 and on 16 March and 8 June 2009. However, he received a copy only of the last one. He adds that in any event, none of the three investigations met the requirements of promptness, independence, impartiality, thoroughness and effectiveness, as required under the Convention. He adds that the investigator of the Internal Security Division of the Department of Internal Affairs of Astana (who adopted the decision of 8 June 2009), in the course of examining his allegations, did not question the complainant personally, did not take into account forensic medical report No. 3393, did not order a scientific examination of the clothes worn by the complainant or the officers indicated by the complainant and did not examine the video recordings of the interrogations of 10 and 16 December 2008. He reiterates that, given that he received a copy of the decision of 8 June 2009 only following his conviction, he could only challenge it within the appeal proceedings.

7.6 With regard to the exhaustion of domestic remedies, the complainant, inter alia, reiterates that he had unsuccessfully complained about his ill-treatment to the prosecutor on 10 December 2008, thereafter to the Prosecutor's Office of Astana and then to the representative of the General Prosecutor's Office during his appeal to the Supreme Court. Consequently, the failure of authorities to address his allegations of torture undermined the complainant's confidence of obtaining redress at the national level. As to the supervisory review proceedings, the complainant recalls that the rejection by the Supreme Court of the supervisory application of his co-accused, D.T., who was also ill-treated, demonstrates the ineffectiveness of such proceedings. In addition, the clear unwillingness of the authorities to investigate serious allegations of ill-treatment in the present case demonstrates that the possibility of submitting a complaint within the supervisory review proceedings would have been an ineffective domestic remedy.

7.7 In light of this, the complainant requests the Committee to conclude that his rights under article 1, read in conjunction with article 2, paragraph 1, as well as under articles 12, 13 and 14 of the Convention have been violated. He requests the Committee to ask the State party to carry out an effective investigation into his allegations of torture and to have those responsible prosecuted. He further requests that his forced confessions are expunged from the list of evidence retained in his criminal case. Finally, he requests the State party to compensate and rehabilitate him.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claims contained in a complaint, the Committee must decide whether or not it is admissible under article 22 of the Convention.

8.2 The Committee has ascertained, as it is required to do under article 22, paragraph 5(a), of the Convention that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

8.3 With respect to the exhaustion of domestic remedies, the Committee notes that the State party challenges the admissibility on the grounds that the complainant has not appealed to a higher prosecutor the decision of 8 June of 2009, by which an investigator of the Internal Security Division of the Department of Internal Affairs of Astana refused to open a criminal case on the complainant's allegations of torture. Further, the State party claims that he failed to complain to the Supreme Court within the supervisory review proceedings, and that, in case of disagreement with the court's ruling that has entered into force, he could have complained to the General Prosecutor, also under the supervisory review proceedings.

8.4 With regard to the State party's argument that the complainant has not appealed the decision of 8 June 2009 of the Internal Security Division of the Department of Internal Affairs of Astana, the Committee notes that the complainant's allegations of ill-treatment have been drawn to the attention of the competent national authorities on numerous occasions. In particular, it remains uncontested that the complainant complained to a prosecutor of the Prosecutor's Office of Astana during his interrogation on 10 December 2008, i.e., one day after the alleged acts of torture occurred, and also to a prosecutor during the interrogation on 16 December 2008. On 21 January 2009, the complainant's father submitted a written complaint to the Prosecutor's Office of the Almatinsky District of Astana against the treatment of his son. On 18 May 2009, the complainant's mother submitted another complaint to the Department of Internal Security of the Ministry of Internal Affairs. On 22 May 2009, the complainant's lawyer requested the Prosecutor's Office of Astana to receive a copy of the formal refusal to open an investigation into allegations of torture. The complainant also complained in court, during the trial, that he had been subjected to torture (i.e. during the hearing before the Astana City Court on 26 May 2009 and in his appeal of 29 June 2009 to the Supreme Court, at which a representative of the General Prosecutor's Office was present). Therefore, the competent authorities have been notified of the complainant's allegations of torture.

8.5 As to the State party's argument concerning the complainant's failure to exhaust the available domestic remedies within the supervisory review proceedings with the Supreme Court and the General Prosecutor's Office, the Committee notes that the complainant appealed the judgement of 16 June 2009 of the Astana City Court to the Supreme Court. His appeal was rejected and the judgment of the lower court entered into force on 10 November 2009. In this regard, the Committee observes that, even considering that the supervisory review proceedings may be effective in some instances, the State party has not provided any evidence as to the effectiveness of these proceedings in cases of torture. The

Committee further takes note of the statistical figures provided by the State party, intended to demonstrate that a supervisory review was an effective remedy (i.e. in 2010, 48 persons were acquitted in the framework of the supervisory review proceedings, while during the first half of 2011, 13 persons were acquitted.). However, the State party has not shown whether and in how many cases supervisory review procedures were successfully applied in cases concerning torture and where conviction was based on forced confessions obtained under torture. In these circumstances, the Committee considers that the State party has not provided sufficient information to demonstrate the effectiveness of filing a complaint before the General Prosecutor's Office and the Supreme Court under the supervisory review procedure about ill-treatment or torture, following the entry into force of the final decision of a court.

8.6 The Committee recalls that the rule of exhaustion of all domestic remedies does not apply if the application of domestic remedies has been or would be unreasonably prolonged or would be unlikely to bring effective relief.[7] In this connection and in the circumstances described above, the Committee notes that the complainant, his relatives and his lawyer have made reasonable efforts and attempts to have domestic remedies exhausted, but without success. Accordingly, the Committee is not precluded by the requirements of article 22, paragraph 5 (b), of the Convention from considering the communication on the merits.

8.7 With reference to article 22, paragraph 4, of the Convention and rule 111 of the Committee's rules of procedure, the Committee finds no other obstacle to the admissibility of the communication and proceeds to its examination on the merits.

Consideration of the merits

9.1 The Committee has considered the communication in the light of all information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention.

9.2 The Committee notes that the complainant has alleged a violation of article 1, read in conjunction with article 2, paragraph 1, of the Convention, on the grounds that the State party failed in its duty to prevent and punish acts of torture. These provisions are applicable insofar as the acts to which the complainant was subjected are considered acts of torture within the meaning of article 1 of the Convention.[8] In this respect, the Committee notes the complainant's detailed description of the treatment he was subjected to while in police custody and of the content of forensic medical report No. 3393 of 10 December 2008 documenting the physical injuries inflicted on him to force him to confess his guilt in a multiple murder, robbery and other crimes. The Committee considers that the treatment as described by the complainant can be characterized as severe pain and suffering inflicted deliberately by officials with a view to obtaining a forced confession. The State party, while not contesting the conclusions of the medical report, denies any involvement by officials. It is uncontested that the complainant was placed in pretrial investigation at the premises of the Ministry of Internal Affairs in Astana at the time his injuries were incurred. Under these circumstances, the State party should be presumed liable for the harm caused to the complainant unless it provides a compelling alternative explanation. In the present case, the State party provided no such explanation and thus the Committee must conclude that the investigating officers are responsible for the complainant's injuries. Based on the detailed account which the complainant has given of ill-treatment and torture, and the corroboration of his allegations in the medical forensic documentation, the Committee concludes that the facts as reported constitute torture within the meaning of article 1 of the Convention and that the State party failed in its duty to prevent and punish acts of torture, in violation of article 2, paragraph 1, of the Convention.

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[7] See, e.g., communication No. 024/1995, *A.E. v. Switzerland*, decision of 2 May 1995, para. 4.

[8] See communication No. 269/2005, *Ali Ben Salem v. Tunisia*, decision of 7 November 2007, para. 16.4.

9.3 The complainant also claims that no prompt, impartial and effective investigation was carried out into his allegations of torture and that those responsible have not been prosecuted, in violation of articles 12 and 13 of the Convention. The Committee notes that, although the complainant reported the acts of torture the day after their occurrence, during his interrogation on 16 December 2008, and that his family reported the complainant's ill-treatment, inter alia, on 21 January 2009, a preliminary inquiry was initiated only after six months and resulted in a refusal to open a criminal investigation due to a lack of corpus delicti in the actions of the police officers. Thereafter, following the complainant's appeals before the national courts, his complaints concerning acts of torture were disregarded; no investigation was initiated and no criminal responsibility was attributed to the officers responsible.

9.4 The Committee recalls that an investigation in itself is not sufficient to demonstrate the State party's conformity with its obligations under article 12 of the Convention if it can be shown not to have been conducted impartially.[9] In this respect, it notes that the investigation was entrusted to an investigator of the Internal Security Division of the Department of Internal Affairs of Astana, essentially the same institution where the alleged torture had been committed. In this connection, the Committee recalls its concern that preliminary examinations of complaints of torture and ill-treatment by police officers are undertaken by the Department of Internal Security, which is under the same chain of command as the regular police force and consequently do not lead to impartial examinations.[10]

9.5 The Committee recalls that article 12 of the Convention also requires that the investigation should be prompt and impartial, promptness being essential both to ensure that the victim cannot continue to be subjected to such acts and also because in general, unless the methods employed have permanent or serious effects, the physical traces of torture, and especially of cruel, inhuman or degrading treatment, soon disappear.[11] The Committee notes that a preliminary investigation was started six months after the reported acts of torture on 10 December 2008. The Committee also notes that, according to the information contained in the decision of 8 June 2009 of the Internal Security Division, the investigation into the complainant's allegations relied heavily on the testimony of the police officers who denied any involvement in the torture and attached little weight to the complainant's allegations and the uncontested medical evidence documenting the injuries inflicted on him (medical forensic examination report No. 3393). A decision to refuse to initiate criminal proceedings was adopted only on 8 June 2009 and no criminal charges were brought against the perpetrators or any remedy provided to the complainant. In addition, the Committee notes that it remains uncontested that the complainant was never promptly informed by the authorities who investigated his complaints, as to whether the investigation was being carried out and at what stage the investigation was.[12]

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[9] See communication No. 257/2004, *Kostadin Nikolov Keremedchiev v. Bulgaria*, decision of 11November 2008, para. 9.4.

[10] See CAT/C/KAZ/CO/2, para. 24.

[11] Communication No. 59/1996, *Encarnación Blanco Abad v. Spain*, decision of 14 May 1998, para. 8.2.

[12] See communication No. 207/2002, *Dragan Dimitrijevic v. Serbia and Montenegro*, decision of 24 November 2004, para. 5.4.

9.6 In the light of the above findings and based on the materials before it, the Committee concludes that the State party has failed to comply with its obligation to carry out a prompt and impartial investigation into the complainant's allegations of torture, in violation of article 12 of the Convention. The Committee considers that the State party has also failed to comply with its obligation, under article 13, to ensure the complainant's right to complain and to have his case promptly and impartially examined by the competent authorities.

9.7 With regard to the alleged violation of article 14 of the Convention, the Committee notes that it is uncontested that the absence of criminal proceedings deprived the complainant of the possibility of filing a civil suit for compensation since, according to domestic law, the right to compensation for torture arises only after conviction of the responsible officials by a criminal court. The Committee recalls in this respect that article 14 of the Convention recognizes not only the right to fair and adequate compensation, but also requires States parties to ensure that the victim of an act of torture obtains redress. The redress should cover all the harm suffered by the victim, including restitution, compensation, rehabilitation of the victim and measures to guarantee that there is no recurrence of the violations, while always bearing in mind the circumstances of each case. The Committee considers that, notwithstanding the evidentiary benefits to victims afforded by a criminal investigation, a civil proceeding and the victim's claim for reparation should not be dependent on the conclusion of a criminal proceeding. It considers that compensation should not be delayed until criminal liability has been established. A civil proceeding should be available independently of the criminal proceeding and necessary legislation and institutions for such civil procedures should be in place. If criminal proceedings are required by domestic legislation to take place before civil compensation can be sought, then the absence or delay of those criminal proceedings constitute a failure on behalf of the State party to fulfil its obligations under the Convention. The Committee emphasizes that disciplinary or administrative remedies without access to effective judicial review cannot be deemed to constitute adequate redress in the context of article 14. On the basis of the information before it, the Committee concludes that the State party is also in breach of its obligations under article 14 of the Convention.[13]

9.8 With regard to the alleged violation of article 15 of the Convention, the Committee observes that the broad scope of the prohibition in article 15 of the Convention, proscribing the invocation of any statement which is established to have been made as a result of torture as evidence in any proceedings is a function of the absolute nature of the prohibition of torture and implies, consequently, an obligation for each State party to ascertain whether or not statements admitted as evidence in any proceedings for which it has jurisdiction have been made as a result of torture.[14] In this connection, the Committee observes that the national courts failed to address adequately the complainant's repeated allegations that he had been forced to produce written confessions as a result of torture. Accordingly, the Committee concludes that the State party has failed to ascertain whether or not statements admitted as evidence in the proceedings have been made as a result of torture. In these circumstances, the Committee concludes that there has been a violation of article 15 of the Convention.

10. The Committee, acting under article 22, paragraph 7, of the Convention, is of the view that the facts before it disclose violations of article 1 in conjunction with article 2, paragraph 1, and of articles 12, 13, 14 and 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

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[13] Ibid., para. 5.5.

[14] See e.g. communication No. 219/2002, *G.K. v. Switzerland*, decision adopted on 7 May 2003, para. 6.10.

11. The Committee urges the State party to conduct a proper, impartial and independent investigation in order to bring to justice those responsible for the complainant's treatment, to provide the complainant with redress and fair and adequate reparation for the suffering inflicted, including compensation and full rehabilitation, and to prevent similar violations in the future. Pursuant to rule 118, paragraph 5, of its rules of procedure, the State party should inform the Committee within 90 days from the date of the transmittal of this decision of the steps it has taken in response to the present decision.

Communication No. 455/2011: *X.Q.L. v. Australia*

Submitted by:	X.Q.L. (represented by counsel, John Clark of Balmain for Refugees)
Alleged victim:	The complainant
State party:	Australia
Date of complaint:	3 March 2011 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 2 May 2014,

Having concluded its consideration of communication No. 455/2011, submitted to the Committee against Torture by X.Q.L. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is X.Q.L., a Chinese national, born on 8 October 1978, and residing in Australia. She claims that her deportation to China would constitute a violation by Australia of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant is represented by counsel, John Clark of Balmain for Refugees.

1.2 On 4 March 2011, in application of rule 108, paragraph 1, of its rules of procedure[1] the Committee asked the State party not to expel the complainant to China while her complaint was being considered by the Committee. The State party later informed the Committee that it would communicate to it any decision regarding removal of the complainant, which may be taken before the Committee issues its decision on admissibility and merits.

Facts as submitted by the complainant

2.1 The complainant was born in Fuqing in Fujian Province, China, on 8 October 1978. In January 2005 she started practicing Tien Tao religion after being introduction to it through a friend, J.P.H.

2.2 The complainant was approached by the police in February 2005 and questioned about her activities with Tien Tao. She was taken into police custody and at the police station she was beaten and asked to help the police arrest other members of the organization. As a result of the beating she suffered an injury to her left index finger, which was crushed.[2] She was released from police custody the following day. The complainant received medical treatment for her injury at 73301 Hospital in Fuqing.

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[1] This rule now appears as rule 114, paragraph 1, of the Committee's revised rules of procedure (CAT/C/3/Rev.5).

2.3 In the days following the incident, the complainant was contacted by the police and requested to provide information about members of Tien Tao, including J.P.H. She was also forced to contact J.P.H. In April 2005, she fled to Chongqing, Bishang County, and hid at a friend's place. The police visited her family in Fujian on several occasions with a warrant for her arrest. Her family subsequently purchased a passport with a fake identity for her to leave China. She arrived in Australia on 19 April 2005 on a valid tourist visa.

2.4 Fearing that she and her family would be persecuted by the Chinese authorities if she returned to China, the complainant filed an application with the Australian Department of Immigration and Citizenship (Immigration Department) for a protection visa on 27 May 2005, using the same fake identity and claiming that she was a Falun Gong practitioner, as advised by the migration agent. On 18 August 2005, her application was refused. On 12 September 2005, she applied for review to the Refugee Review Tribunal (RRT), which upheld the refusal decision on 11 January 2006. The RRT decided that it could not verify her identity nor that she was a Tien Tao practitioner in China before her arrival in Australia. The complainant claims that due to the misguiding advice of the migration agent, she lost an opportunity to genuinely present her claims to the Australian authorities.

2.5 Her application for a judicial review by the Federal Magistrate Court as well as her appeal to the Federal Court were dismissed on 30 August 2006 and 23 February 2007, respectively. On 27 December 2007 and 30 November 2009, the complainant applied to the Minister for Migration to intervene; both applications were deemed not to meet the guidelines and were not referred to the Minister for consideration. The complainant claims that she has exhausted all domestic remedies.

2.6 The complainant joined a Tien Tao community in Sydney in August 2005 and claims to have been a regular practitioner since. There she met L.D.Z., who is the Master of the Tien Tao temple she attends. L.D.Z. visited the complainant's children during her trip to China in 2011, at the request of the complainant. L.D.Z. was subsequently stopped, harassed and threatened by the Chinese police, who questioned her about her relationship with the complainant.

The complaint

3.1 The complainant claims that her forcible deportation to China would amount to a violation of article 3 of the Convention as she fears being tortured by the Chinese authorities because of her continued involvement with the Tien Tao religion.

3.2 The complainant also claims that the danger for Tien Tao practitioners in China is serious. To that end, she attached to her submission an RRT Research Response, dated 19 October 2007, concerning the situation and treatment of Tien Tao practitioners in China, particularly in Fujian.

State party's observations on admissibility and merits

4.1 On 29 June 2012, the State party submitted its observations on the admissibility and merits of the communication. The State party considers that the communication should be dismissed for lack of merit.

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[2] The medical report describes the injury and the treatment recommended and states the following: "The patient was arrested by police when she attended a meeting. The police officer beat her with an electric baton, causing skin lacerations in the ending section of the index finger of the left hand and nail loss. The finger is bleeding and swollen, and cannot function normally".

4.2 The State party outlines the facts of the case and describes the procedure followed by the complainant at the national level. It highlights that in the complainant's first application to the Immigration Department for a protection visa she used the false name, Mei Liu, and claimed that she feared being tortured by the Chinese authorities if she were deported because she was a Falun Gong practitioner. The Immigration Department rejected her application because it was not convinced that she had a well-founded fear of persecution for any of the Refugees Convention reasons nor was it persuaded that she had a significant leadership role in Falun Gong. It further indicated that the complainant would be able to practice her religion in her private life without interference. Furthermore, the fact that the complainant was able to leave China legally indicated that she was not of interest to the Chinese authorities.

4.3 Regarding the Refugee Review Tribunal (RRT), it could not verify the complainant's identity as she used different names and identity documents in her protection visa application and the RRT application. Furthermore, she claimed that she was a Tien Tao practitioner and withdrew her claim of being a Falun Gong practitioner. The RRT did not accept that the complainant's claim that she was a Tien Tao practitioner in China or that she was harassed by the police. It held that the complainant's engagement in Tien Tao activities in Sydney was solely for the purpose of strengthening her refugee claim.

4.4 Following the dismissal of her application for judicial review by the Federal Magistrate Court as well as of her appeal to the Federal Court of Australia, the complainant submitted applications for intervention by the Minister for Migration in 2007, 2009 and 2010. In her 2010 request, the complainant reiterated her claim that it is due to the misguiding advice she received from the migration agent that she was unable to genuinely substantiate her claim before the Immigration Department. The case officers concluded that there was no new credible information that would enhance the complainant's chances of making a successful protection visa application. In her last application to the Minister for Migration for intervention, dated 4 March 2011, she supported her claim with an uncertified photocopy of an untranslated Chinese document, which she claimed was the hospital report describing the injury to her left index finger that was inflicted by the police at a temple meeting. On 18 July 2011, the complainant's request was deemed not to meet the guidelines set out in sections 417 and 48B of the Migration Act, as they were the same claims as those submitted earlier to the RRT, which had concluded that there was no evidence to believe that the complainant was of interest to the Chinese authorities for practicing Tien Tao or for any other reason.

4.5 After outlining the legal framework of the complainant's application, the State party submits that the complainant did not provide sufficient evidence that she would be personally at risk of torture if deported to China. The photocopy of the medical report dated 17 February 2005 was examined by the Immigration Department in the context of the application for ministerial intervention, which was deemed not to sufficiently support the complainant's claim that she had been beaten by the police and finalized on 18 July 2011. The original document was not submitted to the Immigration Department, therefore its genuineness could not be determined. Fraudulent documents, including hospital documents, are easy to obtain in certain countries. Lastly, the complainant chose to submit that document in 2011. Given the foregoing, the State party concludes that there are serious concerns about the genuineness of the document.

4.6 It submits that even if the document is genuine, there is no evidence that the injury to the complainant's finger was intentional or aimed at obtaining information about Tien Tao practitioners nor that the injury was due to torture, as defined under article 1 of the Convention.

4.7 Concerning the complainant's claim that during her visit to China, L.D.Z. had encountered harassment from the police about her relationship with the complainant, that claim was considered by the Immigration Department in May 2010 and found not to be credible as there was no evidence that the complainant was of interest to the Chinese authorities due to her religious beliefs. Despite the presumed senior role of L.D.Z. in the Tien Tao religion, the fact that she was able to enter and leave China without being subjected to torture indicates that the complainant, who does not hold a prominent role in the religion, would not risk being subjected to torture if deported to China.

4.8 The State party claims that the complainant's communication to the Committee does not contain any new information that was not examined during the domestic processes. The RRT considered and rejected her claim regarding persecution in China for practicing Tien Tao. It was not convinced that she had been persecuted, and it felt that her engagement in Tien Tao activities in Sydney was made solely for the purpose of strengthening her application before the Immigration Department. The Federal Court and the High Court upheld the decision of the RRT as no error of law was found. The State party recalls the Committee's practice not to question the evaluation of the evidence made in domestic processes.

4.9 The State party concludes that the complainant's claims that she would be at risk of torture if returned to China were found not credible by the Immigration Department and that there has been no material change in the complainant's circumstances since her last application for ministerial intervention in March 2011. Accordingly, in the absence of any credible evidence that the complainant would be at risk of torture, her deportation to China would not be in breach of article 3 of the Convention, and thus her claims should be dismissed for lack of merits.

4.10 On 28 February 2013, the State party provided the Committee with general information on the domestic processes it undertakes in assuming its non-refoulement obligations. It submits that in 2011 to 2012, it granted 7,083 protection visas to applicants in Australia; each applicant is carefully assessed in a robust determination process in line with Australian international protection obligations.

4.11 In 2012, new legislation came into force that provides additional protection in connection with Australia's non-refoulement obligations. The examination of a protection visa application consists of the following: first instance consideration by officers of the Immigration Department; review of the merits by the RRT; judicial review by Australian courts, including the Federal Magistrate Court, the Federal Court and the High Court. Finally, should the applicant not be successful in obtaining a protection visa, application for ministerial intervention may be pursued, whereby the Minister for Migration may intervene in favour of the applicant, if public interest so requires.

4.12 If after exhausting all domestic processes, Australia's protection obligation is not engaged, domestic law requires the removal of the person concerned from Australia as soon as reasonably practicable, and the person concerned is notified accordingly. Before facilitating the return of the person concerned, the State party undertakes a final pre-removal clearance process, in which it verifies that no new information has emerged that would engage its international protection obligation. The Office of the United Nations High Commissioner for Refugees oversees and scrutinizes the removal process, which reinforces the integrity of the process.

Complainant's comments on the State party's observations

5.1 On 1 April 2013, the complainant submitted her comments on the State party's observations. With regard to the State party's claim that the original medical report was not submitted, the complainant refers to her counsel's letter to the Minister for Migration, dated 11 March 2011, to which a copy of the medical report was attached in support of her claim of fear of being tortured if returned to China, and in which it is indicated that the original document was available from the complainant at her place of detention (Villawood Immigration Detention Centre), should the Ministry wish to obtain it and that the hospital where she had been treated after the injury has a record of said treatment. The complainant claims that the State party made no effort to authenticate the document, despite her counsel's indication as to the availability of the original, and she questions the State party's genuine attempt to duly verify the evidence she provided. The complainant furthermore attached the original document with an accredited translation of the medical report to her comments. According to the translation, the complainant was beaten with an electric baton, she suffered skin lacerations in the ending section of her left index finger as well as nail loss, the wound was treated by debridement and stitches.

5.2 As to the State party's claim about the lack of sufficient evidence to substantiate her claim of fear of being tortured if returned to China, the complainant states that, although she had not provided the medical report to the Immigration Department during the protection visa application process, she had submitted it with her application for ministerial intervention to the Minister for Migration in 2011. Given that the State party did not attempt to investigate the authenticity of the document, its presumed fake nature is deceiving. She states that she did not submit the document earlier because she did not know that she could use it as evidence in furthering her case. It was only in 2011, after having been advised by counsel that she became aware of the importance of the document for her protection visa application.

5.3 Regarding the State party's claim about the lack of intention relating to the injury to her finger, the complainant states that the State party never attempted to clarify the matter with her directly. The State party also failed to interview L.D.Z. about her statement in favour of the complainant and it also erred in concluding that the complainant would not risk torture if returned to China because L.D.Z., who holds a prominent position within the Tien Tao organization in Sydney, was not tortured during her visit to China. She states that the Chinese authorities did know about L.D.Z.'s link to Tien Tao at the time she visited China.

5.4 The complainant attached to her comments a statement by L.D.Z., dated 31 January 2013. In the statement, L.D.Z. claims that she has known the complainant since August 2005 as a member of the Tien Ci Holy Dao Association. She states that at the complainant's request, she visited her children during a trip to China in January 2011. She claims that shortly after the visit, she was questioned by the Chinese police about her relationship with the complainant, who was referred to as the enemy of China because of her religious beliefs. L.D.Z. was warned not to approach the complainant's family again. L.D.Z. further states that the Chinese authorities were not aware of her link to Tien Tao religion.

5.5 Lastly, the complainant states that the RRT decision reflects a lack of knowledge about the treatment Tien Tao practitioners receive in China. If L.D.Z.'s statement is deemed correct, it is logical to conclude that the complainant would, beyond mere theory, risk torture if returned to China. The State party failed to properly consider the complainant's protection visa application and has violated article 3 of the Convention by failing to conduct an effective, independent and impartial investigation of the merits of her claims for a protection visa.

Additional submissions from the State party and from the complainant

6.1 In a Note Verbale dated 11 October 2013, the State party dismissed the complainant's claim that it failed to properly investigate her claims or to verify the evidence she had presented. It recalls that the burden of proof that there is a foreseeable, real and personal risk of torture rests on her. Furthermore, the complainant enjoyed legal counsel for the preparation of her protection visa application and for her most recent application for ministerial intervention.

6.2 The State party submits that it did take steps to verify the hospital report by engaging a Mandarin-speaking officer. However, even if the hospital report was correct, it did not constitute evidence that the injury to her left index finger was linked to her being tortured as a result of her activities as a Tien Tao practitioner so as to fall within the purview of the definition of torture under article 1 of the Convention. Furthermore, the facts did not indicate that she would risk being tortured if returned to China.

6.3 Regarding L.D.Z.'s statement, the State party submits that the statement had not been sworn or affirmed before a person authorized to witness signatures, such as a lawyer or justice of the peace, that the contents were true. The same information was provided in a statement signed by L.D.Z. that was submitted with the complainant's applications for ministerial intervention in 2010 and 2011. The information was found not credible and it did not constitute evidence that the complainant was of interest to the Chinese authorities or that she had been harassed by them due to her religious beliefs. Moreover, the RRT was not convinced that the complainant was a Tien Tao practitioner in China. For all those reasons, the State party submits that L.D.Z.'s statement does not support the complainant's claims that she would risk being tortured if returned to China.

6.4 The State party further dismisses the complainant's claim that decisions on merits are not reviewable in Australia and recalls that the RRT reviewed and dismissed the complainant's claim on the merits, including her revised claims that she would risk being tortured if returned to China owing to her being a Tien Tao practitioner. Furthermore, the complainant's claims were considered by the Immigration Department on three different occasions in the context of her applications for ministerial intervention.

6.5 The State party rejects the complainant's assertion that little is known about the treatment of Tien Tao practitioners in China. Both the Immigration Department and the RRT relied on various sources of information in order to assess the credibility of the complainant's claims. Based on that information and evaluation of the evidence that the complainant provided, they concluded that the complainant was not a Tien Tao practitioner in China, nor was she harassed or harmed by the Chinese authorities because of her religious beliefs.

7.1 On 18 February 2014, the complainant rejected the State party's assertion that the burden of proof rests on her. She recalls that the requirement is for the complainant to provide substantial grounds to prove that there is a personal risk of being subjected to torture. In that regard, she states that she provided the Committee with a statement signed by L.D.Z., dated 31 January 2013, and the original medical report with an accredited translation. Those documents constitute sufficient evidence that she would risk being subjected to torture if returned to China. Thus, the above-mentioned requirement has been met.

7.2 The complainant further stresses that the State party has not addressed her claim that she was given misguiding advice by the migration agent before benefitting from legal counsel to prepare her protection visa application.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any complaint submitted in a communication, the Committee against Torture must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

8.2 The Committee recalls that, in accordance with article 22, paragraph 5 (b), of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that in the instant case, the State party has recognized that the complainant has exhausted all available domestic remedies. As the Committee finds no further obstacles to admissibility, it declares the communication admissible.

Consideration of the merits

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention.

9.2 The issue before the Committee is whether the removal of the complainant to China would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return (*refouler*) a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to China. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would return.

9.3 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention, according to which, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being "highly probable",[3] the Committee notes that the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a "foreseeable, real and personal" risk. The Committee further recalls that under the terms of general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned, while at the same time it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

9.4 With respect to the risk that the complainant might be subjected to torture at the hands of Governmental officials upon return to China, the Committee notes the complainant's claim that she was arrested and beaten by the police because she was a Tien Tao practitioner. However, the Committee also notes the State party's submission that the RRT was unable to verify the complainant's identity, as she had used different names and identity documents in her protection visa application and in the RRT application; and that the complainant had claimed to be a Tien Tao practitioner only after she had withdrawn her claim that she was a Falun Gong practitioner. The Committee recalls that, under general comment No. 1 (para. 5), the burden to present an arguable case lies with the author of a communication. In this connection, irrespective of the question regarding the complainant's affiliation with the Tien Tao religion, the Committee is of the view that she has failed to submit convincing evidence to substantiate her claim that she would be in danger of being subjected to torture were she to be returned to China.

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[3] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44 and Corr.1), annex IX, para. 6.

10. Accordingly, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the complainant's removal to China by the State party would not constitute a breach of article 3 of the Convention.

Communication No. 466/2011: *Alp v. Denmark*

Submitted by:	Nicmeddin Alp (represented by counsel, Niels Erik Hansen)
Alleged victim:	The complainant
State party:	Denmark
Date of complaint:	21 June 2011 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 14 May 2014,

Having concluded its consideration of complaint No. 466/2011, submitted to the Committee against Torture on behalf of Nicmeddin Alp under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is Nicmeddin Alp, a Turkish national born in 1962. His asylum application was rejected in Denmark and, at the time of submission of the complaint, he was awaiting expulsion to Turkey. He claims that his expulsion to Turkey would constitute a violation, by Denmark, of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant is represented by counsel, Niels-Erik Hansen.

1.2 On 24 June and 28 June 2011, the Committee, acting through its Rapporteur on new complaints and interim measures, decided not to accede to the complainant's request for interim measures of protection to suspend his expulsion. On 28 June 2011, the complainant was returned to Turkey by the Danish authorities.

Factual background

2.1 The complainant is an ethnic Kurd and a Muslim from Nusaybin, Turkey. Since 1982, he has been called up yearly to perform military service, but has not responded to the calls. From 1987 to 2001, he was a member of the Kurdistan Liberation Party (PRK-Rizgari, the PRK). In 1982, a number of party members were arrested and provided the police with information regarding the complainant's political activities. As a consequence, on 1 April 1983, he was arrested and subjected to torture by the police while in detention.[1] In 1988, the Supreme Court sentenced him to 20 years' imprisonment. However, in 1991, he was released on parole on the condition that he stop his political activities and undertake not to change residence for six years and seven months. He did not comply and, instead of starting his military service, he moved to the Adana area, where many Kurds lived, and began working for a political organization arranging activities for the PRK.[2] In the period 1991–1994, he was the PRK representative in Adana. In 1991, he attended a PRK conference in Greece. In the meantime, his family received convocations for the complainant to perform his military service and return to the area he was assigned to after his release in 1991. It appears that, at that point in time, it was possible for the complainant to travel across Turkey, on his own identity documents, without risking arrest for evading military service or failing to reside in the assigned area. According to him, a person could be searched, arrested and punished only if wanted for political reasons.

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[1] See para. 2.6 below; according to the Danish Refugee Appeals Board decision of 28 June 2006, on file, he was arrested and sentenced for armed robbery.

2.2 In 1994, the authorities started to arrest PRK members in large cities. In Istanbul, they discovered archives containing names of PRK members, including reports about the complainant's political activities. As he had become wanted by the authorities, the party decided to send him, with false identity documents, to Romania, in November 1994. The trip between Turkey and Romania lasted about nine hours. His parents and siblings remained in Turkey.

2.3 In Romania, the complainant was received by party members and his elder brother, a Swedish resident running a business in Romania. In 1997, the complainant was arrested and he immediately requested asylum. On 13 August 1997, he was recognized as a refugee, on the grounds of his PRK membership since 1976, his detention between 1983 and 1991 in Turkey and his ill-treatment in detention. Amnesty International became aware of his case through his brother and the PRK. The complainant was married in Romania and had a child; he also ran a successful business there.

2.4 In October or November 1999, the complainant represented the PRK at a large party conference in Romania. Turkish intelligence agents, who also attended the conference, threatened to kill him or abduct him and bring him back to Turkey. Thereafter, the complainant was once stopped and once attacked in Bucharest, but he managed to escape. He subsequently contacted the police but they could not help him, for lack of evidence. According to him, the Turkish intelligence service had good opportunities to obtain information about him from the Romanian authorities, as they cooperated well together. Feeling threatened, the complainant obtained a visa for the Netherlands, where his sister lived. In 2001, he flew to the Netherlands for 17 days. He did not request asylum there as he feared being returned to Romania.

2.5 On an unspecified date in 2001, he travelled to Denmark. On 19 June 2001, 10 days after his arrival, he requested asylum there, claiming that he would risk imprisonment and torture if returned to Turkey, because of his political activities and non-performance of military service.

2.6 On 26 July 2002, the Danish Immigration Service rejected his asylum request, for lack of credibility, without ordering a medical examination regarding the complainant's torture marks. Nothing in the case file indicates that the complainant requested a medical examination. On 8 November 2002, the Danish Refugee Appeals Board (the Appeals Board) upheld the decision on appeal.[3] At the same time, the Appeals Board did not contest the complainant's claim that he had been an active member of the PRK until the police had arrested him in May 1983; that he had been tortured during the first 38 days in detention, in particular beaten on his feet and body, hung by the arms, forced to stand for 24 hours, and subjected to electroshock, cold showers and psychological pressure. Although after the first 38 days in detention the torture became less severe, he continued to be beaten regularly. The Appeals Board also noted that the complainant had been sentenced to 20 years' imprisonment in 1988 but had been released on parole in 1991, on the condition that he stop his political activities.[4] According to the complainant, the Appeals Board found that his account lacked credibility, because he had forgotten to inform the Danish authorities of his refugee status in Romania and had submitted that he had travelled by plane from Turkey to Copenhagen in 2001.

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[2] As per the complainant's submission before the Appeals Board in 2002, he informed PRK members of the party's politics and they subsequently recruited new party members. As per his submission before the Appeals Board in 2006, he informed Kurds about the Kurdish liberation fight and recruited new party members.

[3] As per the decision of 8 November 2002, on file, the Appeals Board emphasized that the applicant had not given a detailed account of his alleged political activities; rather, he had described them in very general terms. It also emphasized the reply of 5 April 2002 of the Danish Ministry of Foreign Affairs, in which the Ministry submitted its assessment that the applicant would not risk prosecution for the activities he conducted for the PRK, if returned to Turkey, as he was not mentioned in the

2.7 Later in 2002, after the rejection of his asylum request, the complainant left Denmark for Sweden, where he requested asylum and family reunification. On an unspecified date, the Swedish asylum authorities rejected his asylum request, for lack of credibility, and deported him back to Denmark on 19 September 2003, under article 10, paragraph 1 (e), of the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (Dublin Convention).[5]

2.8 On 13 October 2003, the Appeals Board asked the Office of the United Nations High Commissioner for Refugees (UNHCR) to provide information regarding the complainant's refugee status in Romania. On 10 January 2005, UNHCR submitted that he had applied for refugee status in Romania on 13 October 1996. On 13 August 1997, he had been granted asylum for three years there, on the grounds of his PRK membership since 1976, his imprisonment between 1983 and 1991, and his ill-treatment in detention. His permit to stay in Romania had been extended until 11 August 2002. However, as he had not requested the subsequent extension of his permit, he could not again take up residence in Romania. On 15 September 2005, the Appeals Board received a copy of the complainant's asylum file from UNHCR.

2.9 In the meantime, the complainant left Denmark for Germany, without informing the Danish authorities. His attempts to get married in Germany were unsuccessful, as he had no passport. On 30 May 2005, the German authorities deported him back to Denmark.

2.10 On 5 April 2006, the Appeals Board informed the complainant of its decision to reconsider his case. At the hearing before the Appeals Board, the complainant confirmed that he had been granted refugee status in Romania and that he had stayed there for seven years. He added that his relations with the PRK had ended in 2000 and that, therefore, he had not contacted the PRK in Denmark. As regards the risk of being subjected to ill-treatment if returned to Turkey, he stated that the Turkish authorities would recognize him,

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indictment of the 1994 proceedings and as his activities for the PRK were of a non-violent nature; it would be possible for him to return to Turkey without a Turkish passport by presenting his Turkish identification. The Appeals Board considered that the applicant had not rendered it probable that he would risk a disproportionate punishment if returned to Turkey due to his failure to perform his military service.

[4] Before the Appeals Board in 2002, the complainant submitted that he had stopped his political activities for the PRK in 1999.

[5] Although no relevant decision of the Swedish authorities has been provided, it appears from the material on file that the claimant did not inform those authorities of his refugee status in Romania. It should be noted that under article 10, paragraph 1 (e), of the Dublin Convention, the European Union Member State responsible for examining an application for asylum according to the criteria set out in the Convention is obliged to take back an alien whose application it has rejected and who is illegally in another Member State.

even if he had stopped his activities for the PRK; that, at worst, he would be called up for military service; that he would risk imprisonment, for 12 years, to serve the remainder of his 1988 sentence, and/or for 7 years, if the Turkish authorities charged him with having led the PRK in Turkey; and that he would be subjected to enforced disappearance.

2.11 On 28 June 2006, the Appeals Board rejected the complainant's asylum request as lacking credibility and found that he had failed to substantiate that he would be at risk of persecution if forcibly returned to Turkey. No medical examination of the complainant was requested by the court.[6] Nothing in the case file indicates that the complainant requested such an examination either.

2.12 On 8 August 2008, the UNCHR office in Romania informed the complainant that as he had not requested an extension of his refugee status in Romania, he was no longer considered as a refugee in Romania. UNHCR noted that the expiry of his refugee status could be challenged in Romanian courts, but such proceedings were usually lengthy and the outcome was difficult to predict.

2.13 On 28 June 2011, the complainant was returned to Turkey by the Danish authorities.

2.14 The complainant argues that he has exhausted all available domestic remedies, as the decisions of the Appeals Board are not subject to appeal.[7]

The complaint

3.1 The complainant argues that his forcible return to Turkey constitutes a breach by Denmark of its obligations under article 3, paragraph 1, of the Convention. He claims that he has established a prima facie case before the Committee, as he was granted refugee status because there is a risk of him being subjected to persecution in his country of origin. He adds that reports of international organizations demonstrate that the human rights situation in Turkey is in violation of the Convention. Even if the general situation in the country has changed since his departure in 1994, the situation of politically active Kurds remains difficult.[8] Although the Danish authorities questioned his credibility, they have not contested his past torture and imprisonment in Turkey. He explains the absence of medical documents in support of his torture claim by the failure of the Danish authorities to conduct a medical examination.[9] He emphasizes that he has been politically active since the 1980s and will have to serve the remaining 12 years' imprisonment upon his return to Turkey.

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[6] As per the decision of 28 June 2006, on file, the Appeals Board found, in particular, that the complainant had made contradictory statements regarding his activities and places of residence in 1991 and 1994, that he had concealed his residence in Romania before the Danish authorities. It also noted that he had not explained why he had given up his residence in Romania until the asylum proceedings in Denmark had been reopened. It considered as not credible his claim that he had left Romania in 2001 because of the two alleged incidents of 1999, which he never disclosed to the Romanian asylum authorities. It found that he had given very general and contradictory information about his political activities after his release in 1991, both regarding their level, the period covered and the meetings attended. It also established that, after his release on parole in 1991, the complainant had obtained a driving licence, lived under his own name in Turkey and had been able to travel to Greece and return to Turkey. It found, therefore, that the complainant could not have been wanted under the circumstances and that his claim regarding the risk of persecution, in particular due to his failure to complete military service, was unsubstantiated.

[7] Reference is made to the concluding observations of the Committee on the Elimination of Racial Discrimination on Denmark (CERD/C/DEN/CO/17), paragraph 13, whereby the Committee noted with concern that decisions by the Appeals Board on asylum requests were final and may not be appealed before a court and recommended that asylum seekers be granted the right to appeal against the decisions of the Appeals Board. Reference is also made to the State party's follow-up replies (CERD/C/DEN/CO/17/Add.1), paragraph 12, in which the State party noted that decisions by the Appeals Board are final, "which means that it is not possible to appeal the Board's decisions. This is stated by law and confirmed by a Supreme Court decision of 16 June 1997". Reference is also made to Committee against Torture communications No. 210/2002, *V.R. v. Denmark*, decision adopted on 17 November 2003; No. 225/2003, *R.S. v. Denmark*, decision of inadmissibility adopted on 19 May 2004, and No. 209/2002, *M.O. v. Denmark*, decision adopted on 12 November 2003 (deportation cases), whereby the State party did not contest admissibility on account of non-exhaustion.

3.2 The complainant also claims a violation of his rights under article 3, paragraph 2, of the Convention owing to the lack of investigation into his case by the Danish authorities, notably their failure to conduct a medical examination, and the lack of reasoning regarding the risk of torture, if returned to Turkey, in the decisions of the Appeals Board.

State party's observations on admissibility and merits

4.1 On 3 January 2012, the State party submitted its observations on admissibility and merits. It contends that the claim under article 3 should be declared inadmissible, since the complainant has failed to establish a prima facie case, for purposes of admissibility under article 22 of the Convention and rule 107 of the Committee's rules of procedure.[10] In the alternative, the State party submits that no violation of article 3 of the Convention occurred in relation to the merits of the case.

4.2 The State party recalls the facts of the case. As to the domestic asylum proceedings, it submits that the complainant entered Denmark without valid travel documents, on 11 March 2001, and applied for asylum on 19 March 2001. On 26 June 2002, the Danish Immigration Service rejected his application; the decision was upheld by the Appeals Board on 8 November 2002. On 5 April 2006, the Appeals Board decided to reopen the proceedings in the light of information from UNHCR. On 28 June 2006, the Appeals Board again upheld the decision of 26 June 2002. On 4 July 2007, the complainant's brother and sister-in-law requested that the proceedings be reopened. On 27 September 2007, the Appeals Board informed the complainant that the request for reopening could not be considered as the Board was unaware of his place of residence. On 16 June 2011, the complainant's counsel requested a reopening of the proceedings,[11] which was denied by the Appeals Board on 27 June 2011.

4.3 The State party explains in detail the applicable domestic asylum law and its international obligations, such as the Convention relating to the Status of Refugees (the Refugee Convention), the Convention for the Protection of Human Rights and Fundamental Freedoms, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights. It further describes the organization and decision-making process of the Refugee Appeals Board. It notes, in particular, that the Board is an independent quasi-judicial body, composed of two judges and other members, such as attorneys or employees of the Ministry of Justice, who do not serve in the secretariat of the Board; the Board members are independent and cannot accept or seek directions from the appointing or nominating authority. The decisions of the Board are not subject to appeal. Although an appeal can be brought before the domestic courts under the Danish Constitution, it is limited to legal issues and does not allow for a review of the assessment of evidence. The State party further submits that, as is normally the case, the complainant was assigned a legal counsel, and they both had an opportunity to study the case file and the background material before the meeting of the Board. The hearing was also attended by an interpreter and a representative of the Danish Immigration Service. The Board conducted a comprehensive and thorough examination of all evidence in the case.

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[8] Reference is made to communications No. 373/2009, *Aytulun and Güclü v. Sweden*, decision adopted on 19 November 2010; and No. 349/2008, *Güclü v. Sweden*, decision adopted on 11 November 2010.

[9] Reference is made to two communications against Denmark, No. 409/2009, discontinued on 11 November 2010, and No. 460/2011, discontinued on 14 May 2012, in which the complainants, who had allegedly been subjected to torture in their countries of origin, were not initially allowed to undergo a medical examination; the Danish Appeals Board decided to reopen those cases and grant asylum to the complainants after the registration of the cases by the Committee.

[10] CAT/C/3/Rev.4 (now rule 113, CAT/C/3/Rev.6).

[11] As per his request of 16 June 2011, the counsel contested the failure of the authorities to conduct a medical examination.

4.4 Furthermore, when the Danish immigration authorities decide on applications for asylum, they assess the human rights situation in the receiving country, as well as the risk of individual persecution in that country. Therefore, the complainant is using the Committee only as an appellate body, to obtain a new assessment of his claim, which has already been thoroughly considered by the Danish immigration authorities. With reference to paragraph 9 of the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22,[12] the State party submits that the Committee is rather a monitoring body and should give considerable weight to findings made by the Danish authorities, in particular its Appeals Board.

4.5 As to whether there are substantial grounds for believing that the complainant would be personally at risk of being subjected to torture in Turkey, the State party refers to the Appeals Board decisions of 8 November 2002 and 28 June 2006 in their entirety. It reiterates the reasons underlying the Board's finding that the complainant failed to substantiate the existence of such a risk, in particular, that he had made contradictory statements about his political work and places of residence; that he had failed to substantiate the risk that he would be subjected to disproportionate punishment because of his failure to complete military service; and that he had been able to live under his own name, to get a driving licence and to enter and leave Turkey freely after his release on parole in 1991.

4.6 The State party challenges the credibility of the complainant's statements and underlines the following inconsistencies. First, the complainant stated to the Romanian authorities that he had gone to Greece after his release in 1991 and returned to Turkey in 1992, whereas he submitted to the Danish authorities that he had gone to the Adana area in Turkey after his release. When confronted with those inconsistencies, the complainant replied that he did not consider them important. Second, regarding his political activities after his release, he stated before the Appeals Board in 2002 that he had been a PRK representative but had not recruited new members, whereas in 2006 he stated that he had recruited new party members and provided them with social and historical facts about Kurdistan. Third, although in 2006 he submitted to the Appeals Board that he had requested asylum in Romania in 1997, it follows from his Romanian asylum file that he requested asylum at the Greek embassy in Romania in 1996. In the light of those inconsistencies, which have not been reasonably explained by the complainant, the State party is unable to accept his statements.

4.7 The State party refutes the complainant's contention, with respect to the Appeals Board decision of 8 November 2002, that the assessment of his credibility was based on his failure to notify the Danish authorities of his refugee status in Romania. It explains that the Board was then unaware of his failure to do so. It further argues that the fact that the complainant had been granted refugee status in the past, in another country, is not in itself sufficient to conclude that his removal to Turkey would contravene article 3 of the Convention.

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[12] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44 and Corr.1), annex IX.

4.8 As to the complainant's contention that the Danish authorities have failed to conduct a medical examination, the State party submits that the present case did not warrant otherwise in the light of the finding of the Appeals Board that the complainant had failed to substantiate the risk of being subjected to torture, if returned to Turkey. The State party explains that the Board may request a medical examination in cases invoking torture as a reason for granting asylum. The decision as to the necessity of such an examination is usually made at a Board hearing. The necessity of such an examination is determined on a case-by-case basis and is particularly contingent on the credibility of the torture-related claims. If the Board considers such a claim credible but establishes no real and present risk of torture upon return, a medical examination will normally be dispensed with. Similarly, such an examination will not be necessary if the Board considers that an asylum seeker has not been credible throughout the proceedings, and it rejects his torture claim altogether. However, when the Board considers that an asylum seeker meets the requirements for a residence permit under article 7 of the Aliens Act[13] but the accuracy of his statement remains questionable, a medical examination can be conducted. The State party also submits that the complainant's alleged torture during his imprisonment between 1983 and 1991 is not in itself a sufficient ground for granting asylum.

4.9 The State party challenges the relevance of the complainant's reference to the Committee's case law. It submits that the authors of communications Nos. 373/2009 and 349/2008 were members of the Kurdish Workers Party (PKK) who participated in the organization's armed fight and therefore risked persecution under the Turkish Anti-Terrorism Law. Communications Nos. 409/2009 and 460/2011, in which the Appeals Board reopened the asylum proceeding and issued residence permits to the complainants, were submitted by nationals of the Syrian Arab Republic and Eritrea, respectively. However, it should be noted that the facts are distinguishable, including country-specific information regarding the Syrian Arab Republic and Eritrea as compared to Turkey, in the present case.

4.10 As to the complainant's reference to the description of his alleged torture that was included in the 2002 decision of the Appeals Board, the State party clarifies that the decision merely reproduced his statements to the Danish asylum authorities, which does not imply that the Appeals Board accepted them as true.

4.11 Should the Committee declare the communication admissible, the State party submits that the complainant has failed to establish that his removal to Turkey would contravene article 3 of the Convention. Paragraph 5 of general comment No. 1 places on the complainant the burden to establish an arguable claim. Furthermore, the risk, for the complainant, of being subjected to torture must be assessed on grounds that go beyond mere theory and suspicion, and, although it does not have to be highly probable, it should be real, personal and present, under paragraphs 6 and 7 of general comment No. 1. The

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[13] Article 7 of the Aliens (Consolidation) Act No. 785 of 10 August 2009 reads:

7. (1) Upon application, a residence permit will be issued to an alien if the alien falls within the provisions of the Convention relating to the Status of Refugees (28 July 1951).

(2) Upon application, a residence permit will be issued to an alien if the alien risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to his country of origin. […]

(3) A residence permit under subsections (1) and (2) can be refused if the alien has already obtained protection in another country, or if the alien has close ties with another country where the alien must be deemed to be able to obtain protection.

State party invokes the Committee's jurisprudence and submits, with reference to its arguments contained in paragraphs 4.3 to 4.10 above, that the complainant has failed to establish the existence of such a risk for him, in Turkey. Therefore, his return to Turkey does not constitute a violation of article 3 of the Convention.

Complainant's comments on the State party's observations

5.1 On 26 February 2012, the complainant explained that although he generally agrees with the description of the facts by the State party, the State party has omitted that the counsel's request for a reopening of the proceedings, filed in 2011, also contained a request for the conduct of a medical examination, which was rejected by the Appeals Board on 27 June 2011. He challenges the State party's argument that a medical examination was unnecessary in his case, for lack of credibility. On the contrary, such an examination should have taken place because his credibility was at issue. The complainant argues that his deportation to Turkey, together with the rejection of his medical examination request, constituted a violation of article 3, paragraphs 1 and 2, of the Convention. He also argues that, in the circumstances, the State party's comments on the merits are insufficient.

5.2 The complainant further points out several problems related to the organization and decision-making process of the Appeals Board. First, the decisions of the Board, notably its assessment of evidence, are not subject to review by a court. Second, it lacks impartiality, as one of its three members is an employee of the Danish Ministry of Justice, which processes the applications for a residence permit on humanitarian grounds filed by rejected asylum seekers.

5.3 The complainant emphasizes that, under the Refugee Convention, asylum can be granted based on one's past torture before fleeing a country, even if the risk of persecution upon return thereto has not been established. This notwithstanding, and despite the fact that article 7, paragraph 1, of the Aliens Act refers to the definition of a refugee contained in the Refugee Convention, a residence permit can be granted to a victim of past torture only if there is a risk that he or she would be subjected to torture again, if returned to his or her country of origin. Therefore, it is important to allow a medical examination regarding past torture even if there is no evidence of persecution or torture in the future. In addition, such an examination may support one's description of torture before the Appeals Board, as the Board may "forget" that torture suffered in the past could lead to the recognition of refugee status under the Refugee Convention, even if the risk of persecution or torture no longer exists. Furthermore, under article 7, paragraph 2, of the Aliens Act, the risk of being subjected to torture or persecution should be real. The complainant claims that "real" is difficult to assess, but might mean "highly probable", which is not required under the Convention.

5.4 He argues that the State party fails to refer specifically to the Convention in some parts of its observations, which implies that domestic legislation and the practice of the Appeals Board may not be in line with article 3 of the Convention and general comment No. 1. Unlike the European Convention on Human Rights, international human rights treaties, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, have not been incorporated into the domestic legislation, despite recommendations to that effect by the respective treaty bodies.[14]

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[14] Reference is made to the concluding observations issued by various Committees for Denmark: CAT/C/DNK/CO/5, para. 9; CCPR/C/DNK/CO/5, para. 6; CEDAW/C/DEN/CO/7, para. 14; CERD/C/DNK/CO/18-19, para. 8; and CRC/C/DNK/CO/4, para. 11. The complainant adds that, as a

5.5 The complainant further points out that no oral hearing regarding his counsel's request for a medical examination took place. According to the complainant, the Danish authorities did not find that his claim regarding his past detention and torture by the Turkish authorities, and his reference to the Committee's recent case law regarding Turkey, constituted a sufficient ground to conduct a medical examination for torture. The Danish authorities did not apply any special treatment in his regard and, furthermore, put him in a closed detention camp pending deportation. According to the complainant, in cases where torture is invoked in an asylum claim, the authorities should seek the asylum seeker's agreement to undergo a medical examination, to support his or her allegations of torture. The authorities did not seek such an agreement from the complainant, although he was willing to undergo a medical examination.

5.6 The complainant reiterates that asylum should be granted to victims of past torture, regardless of the risk that they would be subjected to torture upon return to their country of origin. In that connection, a medical examination is the only way to prove past torture. He acknowledges that he did not appear not credible throughout the proceedings and that the Appeals Board rejected his torture claim altogether. He claims, however, that although the Board "did not directly reject" his statement about the imprisonment and torture, it did not explain its doubts to that effect but, instead, "jumped to the conclusion that there is no risk of torture upon return".

5.7 He further claims that the test used by the Appeals Board to opt or not for a medical examination is difficult to understand. He assumes that he did not fulfil the test requirements. At the same time, he claims that the absence of the risk, for him, of being subjected to torture if expelled from Denmark, cannot be based solely on his submissions about the trip to Greece and the return to Turkey, as those submissions, in themselves, do not permit to establish that he was not tortured at the hands of the Turkish authorities. According to general comment No. 1, the complainant's credibility is only one element among many others in an assessment of the risk of torture upon return. In his circumstances, a medical examination was necessary, in particular, in the light of the State party's obligation under article 3, paragraph 2, of the Convention, to take into account all relevant considerations to determine whether there are substantial grounds for believing that he would be in danger of being subjected to torture in the country of origin.

5.8 The complainant disagrees with the State party's argument that his communication is inadmissible as manifestly ill-founded. He states that Turkey is a country where gross, flagrant and mass violations of human rights occur, which is confirmed by the Committee's recent concluding observations on Turkey.[15] The State party has not directly denied that he was imprisoned and subjected to violence at the hands of the Turkish authorities. A medical examination should have been conducted to clarify inconsistencies in his case. Therefore, the Committee should declare his case admissible and review it on the merits.

5.9 The complainant argues that the inconsistencies in his submissions to the Danish asylum authorities were minor and, therefore, irrelevant to the consideration of his asylum claim. He initially withheld information about his residence in Romania as he did not want to be returned to that country, where he did not feel safe because the Turkish authorities had located him there. He disagrees with the State party's argument that his removal to Turkey, despite him having been recognized as a refugee in Romania, would not be sufficient grounds to find a violation of article 3 of the Convention. He also rejects the State party's

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consequence, the legal status of the decisions of the Committee against Torture in connection with individual complaints is uncertain and the State party is reluctant to implement the Committee's views.

[15] CAT/C/TUR/CO/3.

argument that his alleged torture in prison between 1983 and 1991 is not a sufficient ground for obtaining asylum. In connection with the refusal of the Danish authorities to conduct a medical examination for torture, he claims that the State party has failed to analyse his claim under paragraph 8 (b)–(e) of general comment No. 1. His recognition as a refugee in Romania, on account of a well-founded fear of persecution in Turkey, should lead to his recognition as a refugee in Denmark.

5.10 The complainant reiterates that communications No. 373/2009 and No. 349/2008 are relevant to his case. Although he was not a PKK member, he was politically involved; nevertheless, the State party has not mentioned paragraph 8 (e) of general comment No. 1 in its assessment of the risk of torture upon return to Turkey. Those communications are also relevant in terms of paragraph 8 (a) of general comment No. 1, because they contain the Committee's analysis of the human rights situation in Turkey, which is characterized by persistent gross and flagrant human rights violations. He further refers to the Committee's concluding observations on Turkey[16] to underline that torture is a major problem in Turkish prisons, and that, this notwithstanding, the concluding observations were not included in the background material on the country collected by the Appeals Board. There is, therefore, no reason to believe that only PKK members, persecuted under the Turkish Anti-Terrorism Law, are subjected to torture in Turkey.

5.11 Furthermore, communications No. 409/2009 and No. 460/2011 illustrate, according to the complainant, how the Danish authorities neglected their responsibility to allow a medical examination for persons who had been subjected to torture in countries with a pattern of gross, flagrant and mass human rights violations, before rejecting their asylum requests.

5.12 The complainant argues that the Appeals Board has a duty to issue an explicit decision as to whether it has accepted as true that he was tortured before having fled Turkey. No such decision was made in his case, despite the fact that his claim of torture has paramount importance for the assessment under paragraph 8 (b) and (c) of general comment No. 1. His case is thus similar to communication No. 339/2008, whereby the Committee established that the State party had never denied that the complainant, a politically involved Iranian national, had been tortured in the past, and found a violation of article 3 of the Convention on account of his forced removal to the Islamic Republic of Iran.[17]

5.13 The complainant believes that the State party's observations on the merits must be refuted, because they contain no mention of the grounds listed in paragraph 8 (a)–(g) of general comment No. 1.

5.14 The complainant's counsel submits that, according to family members, the complainant was detained after his arrival in Turkey. As at 16 March 2014, counsel did not have information as to whether or when he would be released. He fears that the complainant could be subjected to torture in detention.

5.15 In conclusion, the complainant submits that his return to Turkey constitutes a violation of article 3, paragraphs 1 and 2, of the Convention. First, by rejecting his asylum request on 26 June 2002 and 27 June 2011, without a medical examination, the Danish authorities failed to take into account all relevant considerations to determine the risk, for him, of being subjected to torture upon return to Turkey, in violation of article 3, paragraph 2, of the Convention. Second, the denial of a medical examination in asylum cases and the refusal to allow evidence in the form of such an examination constitute a matter of concern in a number of cases filed against the State party.[18] The complainant expresses hope that his case will clarify the State parties' responsibility to consider such evidence, under paragraph 8 (a)–(e) of general comment No. 1. Lastly, he claims compensation for the suffering inflicted upon him due to his forcible deportation. Finally, counsel asks the Committee to clarify the complainant's present situation with the Turkish authorities.

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[16] Ibid., paras. 7–13.

[17] Communication No. 339/2008, *Amini v. Denmark*, decision adopted on 15 November 2010.

State party's further submissions

6. On 13 April 2012, the State party reiterated its previous observations and submitted further information concerning the complainant's comments. In particular, it agrees with his argument that under the Refugee Convention, refugee status can be granted with reference to the applicant's subjective fear without such fear being based on objective and ascertainable circumstances.[19] The State party argues, however, that the application of the Refugee Convention does not fall within the Committee's mandate and dismisses the complainant's argument as irrelevant to the assessment of the risk under the Convention. It submits that the issue of subjective fear is based on the same account, evidence and facts as were previously presented to, and carefully considered by, the Danish authorities.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.2 The Committee recalls that, in accordance with article 22, paragraph 5 (b), of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the instant case, the State party has not contested that the complainant has exhausted all available domestic remedies.

7.3 The Committee notes the State party's submission that the communication is inadmissible as manifestly unfounded. The Committee considers, however, that the arguments put forward by the complainant raise substantive issues, which should be dealt with on the merits. Accordingly, the Committee finds no obstacles to the admissibility and declares the communication admissible. Since both the State party and the complainant have provided observations on the merits of the communication, the Committee proceeds immediately with the consideration of the merits.

Consideration of the merits

8.1 In accordance with article 22, paragraph 4, of the Convention, the Committee has considered the present communication in the light of all information made available to it by the parties concerned.

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[18] Reference is made to communications No. 409/2009 and No. 460/2011, referred to above (discontinued further to the State party's granting asylum to the complainants), No. 429/2010 *Sivagnanaratnam v. Denmark*, decision adopted on 11 November 2013, and No. 458/2011 (pending).

[19] Reference is made to the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (Geneva, 1992), paras. 37 ff.

8.2 With regard to the complainant's claim under article 3 of the Convention, the Committee must evaluate whether there are substantial grounds for believing that he would be personally in danger of being subjected to torture upon return to his country of origin. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

8.3 The Committee recalls its general comment No. 1, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being "highly probable", the Committee notes that the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a "foreseeable, real and personal" risk.[20] The Committee further recalls that, in accordance with its general comment No. 1, it gives considerable weight to findings of fact that are made by the organs of the State party concerned,[21] while at the same time it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

8.4 The Committee notes that the complainant claims to have been tortured during his imprisonment in Turkey between 1983 and 1991 and that the State party should have ordered a medical examination to verify the veracity of his allegations. The Committee, however, notes that the State party's authorities thoroughly evaluated all the evidence presented by the complainant, found it to lack credibility, and did not consider it necessary to order a medical examination. In addition, it notes that the complainant's request for a medical examination was formulated only at a very late stage, that is, in the framework of the second request to reopen the asylum proceedings, submitted to the Appeals Board on the complainant's behalf in 2011. What is more, the Committee doubts the purpose which any medical examination would have served if carried out over 20 years after the alleged torture.

8.5 The Committee further notes that, even if it were to accept the claim that the complainant was subjected to torture in the past, especially in the light of the refugee status granted to him by the Romanian authorities, the question is whether he remains, at present, at risk of torture in Turkey. The Committee notes at the outset the uncontested information on file that the complainant's refugee status ended after his voluntary departure from Romania and that he is not recognized as a refugee in any other country. It further takes note of the complainant's claim that he would be imprisoned, if returned to Turkey, either to serve the remainder of his 1988 sentence or if charged with having led the PRK political party in Turkey before his departure from that country in the 1990s. In that connection, it notes the complainant's statement that he stopped his activities for the PRK in 2000 at the latest. It also notes the counsel's information to the effect that the complainant was detained in Turkey after his removal from Denmark on 28 June 2011.

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[20] See, inter alia, communication No. 203/2002, *A.R. v. Netherlands*, decision adopted on 14 November 2003, para. 7.3. See also communication No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November 2005, para. 8.3.

[21] See, inter alia, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010, para. 7.3.

8.6 The Committee has noted the claim that the complainant runs the risk of being subjected to torture upon return to Turkey, in particular on account of his affiliation with the PRK and his failure to complete military service. It has also noted the complainant's reference to the general human rights situation in Turkey and the Committee's concluding observations underlining the use of torture in Turkish prisons. However, the Committee recalls that the occurrence of human rights violations in his or her country of origin is not sufficient, in itself, to lead it to conclude that a complainant, personally, runs a risk of torture. It also notes that the complainant has submitted no other evidence suggesting that, after his return to Turkey, he would have been imprisoned for his past political activities or his failure to do military service, would have had a disproportionate sentence imposed on him in that connection, or would have faced treatment in contravention of the provisions of the Convention. In the circumstances, the Committee considers that the material on file does not permit it to consider that the Danish authorities, which examined the case, failed to conduct a proper investigation. In addition, the Committee notes that no other material on file permits it to establish that, over 20 years after the alleged torture occurred, the complainant would still face a foreseeable, real and personal risk of being tortured or subjected to inhuman and degrading treatment in his country of origin.

8.7 The Committee recalls paragraph 5 of general comment No. 1, according to which the burden of presenting an arguable case lies with the author of a communication. In the circumstances of this case, in the Committee's opinion, the complainant has not discharged that burden of proof.

9. In the light of the above considerations and in the absence of further pertinent information on file, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the deportation of the complainant to Turkey by the State party did not constitute a violation of article 3 of the Convention.

Communication No. 475/2011: *Nasirov v. Kazakhstan*

Submitted by:	Mumin Nasirov (represented by counsel, Irina Sokolova)
Alleged victim:	The complainant's brother, Sobir Nasirov
State party:	Kazakhstan
Date of complaint:	26 August 2011 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 14 May 2014,

Having concluded its consideration of complaint No. 475/2011, submitted to the Committee against Torture by Mumin Nasirov on behalf of his brother, Sobir Nasirov, under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is Mumin Nasirov, a national of Uzbekistan. He submits the communication on behalf of his brother, Sobir Nasirov, a national of Uzbekistan, born on 10 June 1972. At the time of submission, the complainant's brother was detained incommunicado in a pretrial detention centre of the Ministry of Internal Affairs in Uralsk, Kazakhstan, where he was awaiting extradition to Uzbekistan. The complainant alleges that extraditing his brother to Uzbekistan would violate his brother's rights under articles 3, 6 and 7 of the Convention against Torture. The complainant is represented by counsel, Irina Sokolova.

1.2 On 26 August 2011, in application of rule 114, paragraph 1, (former rule 108, paragraph 1) of its rules of procedure (CAT/C/3/Rev.5), the Committee requested the State party not to extradite the complainant's brother to Uzbekistan while the communication was being considered by the Committee.

The facts as presented by the complainant

2.1 The complainant submits that, on 24 July 2011, at around 3.30 p.m., his brother was arrested by representatives of the border police of the Republic of Kazakhstan while he was crossing the border at Uralsk, Kazakhstan. The complainant alleges that the border police did not present any judicial warrant, nor did they explain the reasons for the arrest. The complainant's brother was taken to a pretrial detention centre of the Ministry of Internal Affairs in Uralsk.

2.2 The complainant submits that his brother is being held incommunicado, that he does not have access to a lawyer and that his correspondence is not being released from the pretrial detention centre.

2.3 On 27 July 2011, Uralsk City Court issued an order for the arrest for the detention for one month, pending extradition, of the complainant's brother. The complainant submits that, according to the Court's decision, his brother faces extradition to Uzbekistan on charges brought against him under the following articles of the Criminal Code of Uzbekistan: article 155 (terrorism); article 159 (attempts to overthrow the constitutional order); article 244, part 3 (illegal exit from or entry into Uzbekistan); article 248, paragraph 1 (illegal possession of arms, ammunition or explosive substances); article 244, paragraph 1 (production and dissemination of materials containing a threat to public security and public order); article 244, paragraph 2 (establishment, direction of or participation in religious extremist, separatist, fundamentalist or other banned organizations). The complainant submits that, while the charges were allegedly related to his brother's participation in the organization of the May 2005 Andijan events, a warrant for his arrest had already been issued by Uzbekistan in February 2003.

2.4 The complainant further submits that the passport number and the address of the residence indicated in the February 2003 arrest warrant did not correspond to his brother's personal data. The complainant maintains that before carrying out extradition, the State party must confirm that the person who is named in the arrest warrant is his brother.

2.5 The complainant submits that, in Uzbekistan, his brother used to work as a furniture maker, along with six other furniture makers. In May 2005, his brother decided to go to the Russian Federation to work there. After his brother's departure to the Russian Federation in May 2005, the other six furniture makers were arrested and charged with various crimes. The complainant alleges that they were tortured during the investigation and that the charges against them were fabricated. They were convicted on terrorism charges related to organizing and participating in the Andijan events.

2.6 The complainant submits that, after his brother's departure to the Russian Federation, their father was arrested and held in detention for several days. The complainant claims that, thereafter, police officers came to his parents' house on numerous occasions and interrogated all the members of the family, seeking information about his brother.

2.7 The complainant submits that his brother's extradition is scheduled for 27 August 2011.

The complaint

3.1 The complainant claims that his brother's extradition to Uzbekistan would constitute a violation by the State party of articles 3, paragraph 1, 6, and 7, paragraph 3, of the Convention.

3.2 The complainant submits that torture is systematic in Uzbekistan and that, in particular, suspected participants in the Andijan events are persecuted and subjected to mass arbitrary arrest and torture. He maintains that if his brother is extradited to Uzbekistan, the likelihood of him being tortured is very high. The complainant maintains that the other furniture makers who worked with his brother were tortured by law enforcement agents in Uzbekistan.

3.3 The complainant submits that his brother has applied for refugee status in Kazakhstan. The complainant maintains that there is very little chance that his brother will be granted refugee status.

State party's observations on admissibility

4.1 On 3 November 2011, the State party challenged the admissibility of the complaint. It submits that, on 27 August 2011, the Office of the Procurator-General of Uzbekistan sent a request for the extradition of the complainant's brother, who is accused of terrorism, interference with the constitutional order of Uzbekistan, illegal establishment of a religious organization, production and dissemination of materials containing a threat to public security and public order, and establishment and participation in religious extremist, separatist, fundamentalist or other banned organizations. According to the materials presented by the Uzbek authorities, he had participated in the illegal establishment of an extremist religious organization called Akromiilar, which aimed to change the constitutional order in the country, taking power or removing lawfully elected or appointed State officials. He was accused of having studied a textbook entitled *Yimonga Joul*, which contained so-called "dogmatic ideas", disseminating those ideas and recruiting members for the organization. He was also accused of conspiring with two other individuals, one of whom was later killed during a terrorist attack in Andijan which took place on 12 and 13 May 2005. He was further accused of founding a furniture producing enterprise in 1999, and a leather processing enterprise in 2004–05, 20 per cent of the profits from which were utilized to finance the illegal religious organization. The complainant's brother and others used the funds to purchase communication technology, transport and weapons which were later used to create disturbances in Andijan and to free arrested members of Akromiilar.

4.2 The State party further submits that, on 24 July 2011, the complainant's brother was arrested by the Kazakh authorities. His detention was authorized by Uralsk City Court on 26 July 2011. The same Court later extended the detention for three more months. On 22 August 2011, the complainant's brother's lawyer filed an application for refugee status in Kazakhstan on behalf of the complainant's brother. On 7 September 2011, the complainant's brother filed a request for political asylum with the Directorate of Migration Police, in response to which he "was given a clarifying answer". The State party submits that, if the complainant's brother's request for asylum is rejected, he has the right to appeal before a court in accordance with the Civil Procedure Code. Accordingly, the State party submits that the complainant has not exhausted all available domestic remedies and that the complaint should be declared inadmissible in accordance with article 5, paragraph 2, of the Optional Protocol to the CCPR.[1]

Complainant's comments on the State party's observations

5.1 On 6 January 2012, the complainant submitted that the State party had not submitted any information regarding the effectiveness of the refugee status determination procedure or of the appeals procedure in cases of denial of refugee status, in particular concerning individuals who were accused of terrorism in Uzbekistan and threatened with extradition. The complainant's brother had indeed applied for refugee status, but he did not believe that the application would have a positive outcome, since according to article 12, paragraph 5, of the Kazakh refugee law, persons who are accused of terrorism or participation in illegal religious organizations cannot be granted refugee status. Moreover, the official position of the Government of Kazakhstan regarding the Andijan events is the same as that of the Uzbek authorities. He submits that applications for refugee status from Uzbek nationals are systematically rejected and that out, of 30 such persons detained in Kazakhstan, 29 were denied refugee status and were extradited on a request from Uzbekistan. The complainant submits that his brother will attempt to appeal the decision if denied refugee status, but that they does not believe that the appeal will succeed, since the Kazakh courts as a rule agree with the position of the Office of the Procurator-General and deny appeals in such cases.

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[1] The State party appears to confuse the communication procedures before the Committee against Torture and the Human Rights Committee.

5.2 The complainant urges the Committee to reiterate its request for interim measures to the State party. He points out that, despite the fact that his brother is entitled to file an appeal in the case of denial of refugee status, his brother is kept in detention, the appeal deadlines are very short, he has limited possibilities of filing an appeal, which he is obliged to do through the detention centre administration and he is afraid that he would be extradited immediately. The complainant also submits that, according to non-governmental organization sources, the Kazakh special services illegally handed over at least nine persons to Uzbekistan between May 2005 and August 2007.

State party's additional observations

6.1 On 25 February 2012, the State party reiterated its submission regarding the charges brought by Uzbekistan against the complainant's brother. It submits that, after the Andijan events, the complainant's brother moved to the Russian Federation and that he was arrested on 24 July 2011 by the Kazakhstan border police and national security officers, as an international search warrant had been issued for him. The State party also submits that in Kazakhstan, ratified international treaties have priority over domestic legislation. Article 60 of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters requires States parties, on receipt of a request for extradition, to take immediate steps to find and detain the person whose extradition is sought, except when the extradition cannot be made.[2] When a country issues a motion for an extradition, the person whose extradition is requested may be taken into custody before the formal extradition request is received. The motion must contain a reference to the detention order or the valid verdict, and an indication that the request for extradition will be presented later.[3] A person may be detained without such a motion if there are legal grounds to suspect that he or she has committed an extraditable offence in the territory of the other contracting party.[4]

6.2 The State party maintains that the complainant's brother was arrested lawfully, since, on 24 June 2011, the National Security Committee of the West Kazakhstan District received the ruling of the Office of the Procurator-General of Uzbekistan initiating an investigation against him on terrorism charges, dated 20 February 2006. The State party further submits that the complainant's brother's arrest was carried out in accordance with article 9 of the International Covenant on Civil and Political Rights and the domestic criminal procedure. On 26 July 2011, the Office of the Procurator-General requested approval from Uralsk City Court for the detention pending extradition of the complainant's brother. The Court, after holding an open hearing in the presence of the complainant's brother and the brother's lawyer, approved the request until 24 August 2011. On 27 August 2011, the Office of the Procurator-General of Kazakhstan received the extradition request from the Office of the Procurator-General of Uzbekistan. On 24 August 2011 and 23 September 2011, Uralsk City Court extended the detention of the complainant's brother until 24 September 2011 and 24 October 2011 respectively. The Court noted that no decision to extradite the complainant's brother had been taken by the Office of the Procurator-General of Kazakhstan. On 21 October 2011 and 21 December 2011, the Uralsk City Court extended the detention pending extradition until 24 December 2011 and 24 March 2012 respectively. The above extensions of the detention pending extradition were motivated by the Committee's request for interim measures. According to domestic legislation, detention pending extradition may be extended up to 12 months at the request of the Procurator.[5]

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[2] The Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters was ratified by the State party on 31 March 1993.

[3] Ibid., art. 61, para. 1.

[4] Ibid., art. 61, para. 2.

6.3 On 22 August 2011, the complainant's brother's lawyer filed a request for refugee status on his behalf. On 12 October 2011, the authorities received a request for the discontinuance of the refugee status procedure from the complainant's brother. On 10 December 2011, the Department of Internal Affairs of West Kazakhstan District received a second request for refugee status from the complainant's brother. On 30 December 2011, his request was rejected by the Commission on the implementation of the procedure for granting, extending, withdrawing and terminating refugee status of the Directorate of Migration Police of the Department of Internal Affairs of West Kazakhstan District, based on article 12, paragraphs 4 and 5, of the refugee law adopted on 4 December 2009. Those provisions allow for the rejection of applications for refugee status from individuals who arrived from the territory of a safe third State and from individuals regarding whom there are serious grounds to assume that they have participated in the activities of terrorist, extremist or banned religious organizations in the country of arrival or in the country of origin. The complainant's brother has the opportunity to appeal the rejection in accordance with article 8, paragraphs 1.4 and 1.5, and article 15 of the refugee law and article 280 of the Civil Procedure Code of Kazakhstan. The appeal has to be filed before the court within three months from the initial decision. The complainant's brother's lawyer filed an appeal on his behalf, on 15 February 2012, before Court No. 2 of Uralsk City. At the time of the State party's submission, the appeal was under consideration. Accordingly, no final decision regarding extradition to Uzbekistan had been taken.

6.4 The State party submits that the complainant's brother failed to exhaust the available legal remedies and therefore his communication is inadmissible.

Complainant's additional submissions

7.1 On 11 March 2012, the complainant submitted that, on 27 December 2011, his brother's application for refugee status was rejected by the Commission on the implementation of the procedure for granting, extending, withdrawing and terminating refugee status of the Directorate of Migration Police of the Department of Internal Affairs of West Kazakhstan District and that he appealed the rejection before Court No. 2 of Uralsk City on 15 February 2012.

7.2 On 23 April 2012, the complainant submitted that, on 27 March 2012, Court No. 2 of Uralsk City rejected his brother's appeal based on article 12, paragraphs 4 and 5, of the refugee law (see para. 6.3 above), and because the Court considered that his brother did not "correspond to the definition of a refugee", since he had left Uzbekistan for the Russian Federation for economic reasons. On 13 April 2012, the complainant's brother filed an appeal against that court decision before the Appellate Panel of West Kazakhstan Regional Court. At the time of the submission of 23 April 2012, no court hearing had been scheduled.

7.3 The complainant submits that the State party has not presented information regarding the effectiveness of the refugee procedure for individuals seeking asylum from persecution by the law enforcement authorities of Uzbekistan. His brother's lawyer requested information from the Ministry of Internal Affairs and the Office of the Procurator-General regarding the number of persons seeking asylum in Kazakhstan who claim persecution by the authorities of Uzbekistan, how many of them have been granted refugee status and how many of them have been handed over to Uzbekistan. The Office of the Procurator-General responded that the lawyer was not authorized to request that information. The Ministry did not respond.

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[5] The State party makes reference to art. 534, para. 1, of the Criminal Procedure Code of Kazakhstan.

7.4 The complainant reiterates that his brother's appeals are likely to fail, since the State party's legislation does not provide for refugee status to be granted to individuals whose extradition is sought on charges of terrorism, religious extremism and participation in illegal religious organizations. He maintains that that applies in particular to individuals accused of participating in the Andijan events, since the official position of the Kazakh authorities is identical to that of Uzbekistan. The mere submission of an extradition request by Uzbekistan for such an individual is considered by the State party's Migration Police to constitute a "reasonable ground" to apply article 12, paragraph 5, of the refugee law. The courts consider that the approach of the Migration Police is lawful regarding individuals sought for participation in the Andijan events. The complainant maintains that the practice was confirmed in his brother's case. His brother's refugee status application was rejected based on the existence of an extradition request and the question of whether he risks being subjected to torture was not reviewed on its merits at all. The court also declined to review the issue, despite the lawyer's arguments that his client is under threat of being subjected to torture on return to Uzbekistan. The complainant maintains that further appeals have no prospect of success and that the refugee status determination procedure does not therefore constitute an effective domestic remedy in his brother's case.

7.5 On the merits of his brother's case, the complainant refers to the Committee's jurisprudence that it must take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the country of extradition, and maintains, on the basis of numerous reports, that the practice of such violations is systematic in Uzbekistan.[6]

7.6 The complainant reiterates that his brother's extradition is sought in relation to terrorism charges and alleged participation in the Andijan events (see para 2.3 above) and that his brother's former co-workers, who have already been convicted on the same charges, were subjected to torture in order to extract their confessions. He maintains that, according to Amnesty International, individuals such as his brother are at a heightened risk of being ill-treated and that the Special Rapporteur on the question of torture has requested countries to refrain from handing over individuals accused of participating in the Andijan events to the Uzbek authorities. He submits that, since Uzbekistan had already issued an arrest warrant and an order for his brother's detention on remand, it is highly likely that his brother would be immediately arrested and held incommunicado after his extradition, which would aggravate the risk of being subjected to torture. Furthermore, the decisions of the Kazakhstan courts on extending his brother's detention pending extradition contain references to the fact that he had submitted a complaint to the Human Rights Committee[7] and that he had applied for refugee status. If the extradition takes place, the court decisions will be transmitted to the authorities in Uzbekistan in order for the duration of the detention in Kazakhstan to be subtracted from the final sentence. In Uzbekistan, the very fact that an individual has submitted a communication to a United Nations body or applied for refugee status is considered slander against the constitutional order, which is a crime. The complainant also makes reference to the jurisprudence of the European Court of Human Rights, which has found violations of article 3 of the European Convention on Human Rights in similar cases.[8] He concludes that in the present case, his brother is facing a foreseeable, real and personal risk of torture in the event of his extradition to Uzbekistan.

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[6] The complainant refers to the report of the Special Rapporteur on the question of torture, Theo Van Boven (E/CN.4/2003/68/Add.2), paras. 66 and 67; Amnesty International, "Uzbekistan: lifting the siege on the truth about Andizhan", 20 Sept. 2005; Amnesty International, "Uzbekistan: impunity must not prevail", 10 May 2006; *Amnesty International Report 2011: The State of the World's Human Rights*; report of the Mission to Kyrgyzstan by the Office of the United Nations High Commissioner for Human Rights concerning the events in Andijan, Uzbekistan, 13–14 May 2005 (E/CN.4/2006/119), paras. 42 and 55; report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, on follow-up to the recommendations made by the Special Rapporteur (E/CN.4/2006/6/Add.2); report of the Secretary-General on the situation of human rights in Uzbekistan (A/61/526), paras. 18–21 and 48; and Human Rights Watch, *"No One Left to Witness": Torture, the Failure of Habeas Corpus, and the Silencing of Lawyers in Uzbekistan*, 13 December 2011.

[7] The State party's courts indeed mistakenly refer to a communication before the Human Rights

7.7 The complainant further submits that the Office of the Procurator-General appears to be awaiting the negative decision of the appeals court in response to his brother's application for refugee status in order to issue an order for his deportation. The complainant maintains that his brother will appeal the decision of the Procurator-General to grant the extradition request, but that the appeal has no chance of succeeding, since the Office of the Procurator-General systematically denies that the Uzbek law enforcement agencies use torture and justifies extraditions with the provision of so-called guarantees issued by the Uzbek authorities. Moreover, the courts agree with the position of the Office of the Procurator-General and request that complainants provide official documents confirming that they have been subjected to torture and/or will be subjected to torture in the event of extradition. Obviously, the extradited individuals are not in a position to provide such documents.

7.8 The complainant submits that his brother is under imminent threat of extradition[9] and urges the Committee to reiterate its request for interim measures.

State party's further observations

8. On 23 April 2012, the State party reiterated its previous submission (see paras 6.1–6.4 above).

Complainant's further submissions

9.1 On 18 June 2012, the complainant submitted that, on 7 May 2012, the West Kazakhstan Regional Court rejected his brother's appeal against the 23 April 2012 decision of Court No. 2 of Uralsk City denying him refugee status. The second instance court ruled that the complainant's brother's arguments that in Uzbekistan there was a consistent pattern of gross, flagrant or mass violations of human rights and that the plaintiff might become a victim of torture, inhuman treatment or punishment could not be taken into consideration since there was no concrete evidence that he might be subjected to torture and inhuman treatment in his country. Further, the Court stated that the decision of the Commission on the implementation of the procedure for granting, extending, withdrawing and terminating refugee status of the Directorate of Migration Police of the Department of Internal Affairs of West Kazakhstan District to deny refugee status to the complainant's brother was not mandatory for implementation, that the final decision would be taken by the migration authority and, accordingly, that the appeal was premature.

Committee.

[8] The complainant refers to the jurisprudence of the European Court of Human Rights in the following cases: *Ismoilov and others v. Russia*, Application No. 2947/06, Judgment of 24 April 2008; *Elmuratov v. Russia*, Application No. 66317/09, Judgment of 3 March 2011; and *Sultanov v. Russia*, Application No. 15303/09, Judgment of 4 November 2010.

[9] The complainant refers to a report by Human Rights Centre "Memorial", entitled "Refugees from Uzbekistan in the CIS countries: the threat of extradition (May 2005–August 2007)".

9.2 The complainant further submits that, on 11 May 2012, the Directorate of Migration Police of the Department of Internal Affairs of West Kazakhstan District adopted decision No. 1 refusing to grant refugee status to his brother on the same grounds as the Commission.

9.3 On 17 May 2012, the complainant's brother appealed the 27 March 2012 decision of Court No. 2 of Uralsk City and the 7 May 2012 decision of the West Kazakhstan Regional Court. On 31 May 2012, the Cassation Panel of the West Kazakhstan Regional Court rejected the appeal, stating again that the decision of the Commission on the implementation of the procedure for granting, extending, withdrawing and terminating refugee status of the Directorate of Migration Police of the Department of Internal Affairs of West Kazakhstan District to deny refugee status to the complainant's brother was not "mandatory for implementation" and that the decision of the Directorate of Migration Police of the Department of Internal Affairs had not been appealed separately. At the time of the submission, the complainant's brother's lawyers were preparing an appeal against the 11 May 2012 decision of the Directorate of Migration Police of the Department of Internal Affairs.

9.4 The complainant reiterates that the above appeals have no prospect of succeeding, because the Migration Police decision is based on the provisions of article 12, paragraphs 4 and 5, of the refugee law and the courts have already reviewed and considered those grounds when reviewing the decision of the Commission (see para. 7.4 above). The complainant further alleges irregularities in the State party's implementation of the domestic refugee status determination procedure.

9.5 Regarding the merits of the communication, the complainant reiterates that his brother's extradition to Uzbekistan would lead to a violation by the State party of his brother's rights under article 3 of the Convention.

Issues and proceedings before the Committee

Consideration of admissibility

10.1 Before considering any complaint submitted in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

10.2 The Committee notes the complainant's allegations that his brother's rights under articles 6 and 7 of the Convention have been violated, but observes that he does not provide any elaboration or substantiation of those allegations. Accordingly, the Committee finds, in accordance with article 22 of the Convention and rule 113 (b) of its rules of procedure, that the above allegations have not been sufficiently substantiated for the purposes of admissibility.

10.3 With regard to the complainant's allegation that his brother's extradition to Uzbekistan would violate his rights under article 3 of the Convention, the Committee considers that the communication has been substantiated for the purposes of admissibility, as the complainant has sufficiently elaborated the facts and the basis of the claim for a decision by the Committee.

10.4 The Committee takes note of the State party's submission that the complainant's brother has failed to exhaust the available legal remedies in that, at the time of the submission, the appeals proceedings against the decision of the Migration Police to deny him refugee status had not been finalized, and that his communication was therefore inadmissible. The Committee, however, observes that the State party's domestic law regulating the refugee status determination procedure allows the authorities to refuse refugee protection to an individual who arrived from the territory of a safe third State and to an individual regarding whom there are serious grounds to assume that he or she has participated in the activities of terrorist, extremist or banned religious organizations in the country of arrival or in the country of origin of the individual. The Committee recalls that article 3 of the Convention affords absolute protection against torture to anyone in the territory of a State party, regardless of the person's character or the danger the person may pose to society.[10] The Committee observes that the domestic refugee status determination procedure provides no such protection. Given those circumstances, the Committee concludes that the appeals against the refusal to grant refugee status before the State party's courts do not constitute an effective remedy with regard to evaluation of the risk for the complainant's brother of being subjected to torture on extradition. Consequently, the Committee considers that it is not precluded by article 22, paragraph 5 (b), of the Convention from examining the communication and proceeds to its examination on the merits.

Consideration of the merits

11.1 The Committee has considered the communication in the light of all the information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention.

11.2 The issue before the Committee is whether the extradition of the complainant's brother to Uzbekistan would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

11.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant's brother would be personally in danger of being subjected to torture on return to Uzbekistan. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such a determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not of itself constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

11.4 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention, which states that "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable … The author must establish that … such danger is personal and present".[11] In that regard, in previous decisions the Committee has determined that the risk of torture must be foreseeable, real and personal.

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[10] See the Committee's jurisprudence in communications No. 297/2006, *Sogi v. Canada*, decision adopted on 16 November 2007, para. 10.2 and No. 300/2006, *Tebourski v. France*, decision adopted on 1 May 2007, para. 8.2.

11.5 With regard to the existence of a consistent pattern of gross, flagrant or mass human rights violations, the Committee recalls its concluding observations on the fourth periodic report of Uzbekistan, in which it expressed its concern about numerous, ongoing and consistent allegations that torture and ill-treatment were routinely used by law enforcement and investigative officials, or at their instigation or with their consent, and that persons deprived of their liberty were subjected to torture or ill-treatment for the purpose of compelling a forced confession and that such confessions were subsequently admitted as evidence in court in the absence of a thorough investigation into the torture allegations (CAT/C/UZB/CO/4, paras. 7 and 16).

11.6 The Committee notes that the complainant's brother's extradition is sought pursuant to a request from Uzbekistan accusing him of serious crimes, including terrorism, religious extremism, attempts to overthrow the constitutional order and, in particular, participation in the Andijan events. The Committee reiterates its concern, expressed in its concluding observations following its consideration of the second periodic report of Kazakhstan, about forcible returns to Uzbekistan in the name of the fight against terrorism, and the unknown conditions, treatment and whereabouts of persons returned following their arrival (CAT/C/KAZ/CO/2, para. 15). It also reiterates that the non-refoulement principle in article 3 of the Convention is absolute and the fight against terrorism does not absolve the State party from honouring its obligation to refrain from expelling or returning ("*refouler*") an individual to another State, where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.[12] In that context, the Committee also observes that the non-refoulement principle in article 3 of the Convention is absolute even if, after an evaluation under the 1951 Convention relating to the Status of Refugees, a refugee is excluded under article 1 F (c) of the latter Convention.[13]

11.7 In the circumstances of the present case, the Committee considers that the information before it sufficiently establishes a pattern of gross, flagrant or mass violations of human rights and the significant risk of torture or other cruel, inhuman or degrading treatment in Uzbekistan, in particular for individuals accused of terrorism and of having participated in the Andijan events.

11.8 The Committee recalls that, under the terms of its general comment No. 1 on the implementation of article 3, it will give considerable weight to findings of fact that are made by organs of the State party concerned, but that the Committee is not bound by such findings and has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based on the full set of circumstances in every case.[14] In the present case, the Committee notes that the only body that addressed the issue of whether the complainant's brother faced a risk of torture on return to Uzbekistan was the West Kazakhstan Regional Court in its decision of 7 May 2012. The court plainly rejected the allegations of the complainant's brother, stating that there were no "concrete evidence or grounds" that he would be subjected to torture, without evaluating or even noting the evidence presented regarding the existence of a pattern of gross, flagrant or mass human rights violations in Uzbekistan and the numerous reports that individuals accused of terrorism and participation in the Andijan events have been routinely subjected to torture.

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[11] General comment No. 1, *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44 and Corr.1), annex IX, paras. 6 and 7.

[12] See communications No. 39/1996, *Paez v. Sweden*, Views adopted on 28 April 1997; No. 110/1998, *Núñez Chipana v. Venezuela*, Views adopted on 10 November 1998, para. 5.6; and No. 297/2006, *Singh Sogi v. Canada*, decision adopted on 16 November 2007.

[13] See communication No. 444/2010, *Abdussamatov et al. v. Kazakhstan*, decision adopted on 1 June 2012, para. 13.7.

[14] See, inter alia, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010.

11.9 The Committee notes the complainant's allegations that his brother's former colleagues from the furniture producing enterprise in Uzbekistan had been arrested, subjected to torture during pretrial detention and convicted of terrorism shortly after his brother's departure for the Russian Federation, and observes that the State party does not address those allegations. The Committee also notes the complainant's allegation that in the event of forced return to Uzbekistan, his brother might be subjected to reprisals for applying for refugee status in Kazakhstan and lodging a communication before the Committee, and observes that the State party does not refute that allegation. In the context of the case, the Committee concludes that the complainant's brother, who has been charged with terrorism, interference with the constitutional order of Uzbekistan, illegal establishment of a religious organization, production and dissemination of materials containing a threat to public safety and public order, and establishment of and participation in religious extremist, separatist, fundamentalist or other banned organizations in relation to his alleged participation in the organization of the Andijan events, has sufficiently demonstrated foreseeable, real and personal risk of torture on return to Uzbekistan. Accordingly, the Committee concludes that, in the circumstances of the present case, the State party's extradition of the complainant's brother to Uzbekistan would constitute a violation of article 3 of the Convention.

12. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the extradition of the complainant's brother to Uzbekistan would amount to a breach of article 3 of the Convention.

13. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of the present decision, of the steps it has taken in accordance with the above observations.

Communication No. 477/2011: *Aarrass v. Morocco*

Submitted by:	Ali Aarrass (represented by counsel, Ms. Dounia Alamat and Mr. Christophe Marchand)
Alleged victim:	The complainant
State party:	Morocco
Date of complaint:	3 October 2011 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 19 May 2014,

Having concluded its consideration of complaint No. 477/2011, submitted to the Committee against Torture by Ali Aarrass under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all the information made available to it by the complainant and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is Ali Aarrass, a dual Belgian and Moroccan national. He claims to be a victim of violations of articles 2, 11, 12, 13 and 15 of the Convention. He is represented by counsel.

1.2 On 15 June 2012, the Committee informed the State party that it had decided to consider the admissibility of the communication and the merits together.

The facts as submitted by the complainant

2.1 On 1 April 2008, the complainant was stopped and questioned in Spain and subsequently detained under an international arrest warrant issued by Morocco for membership of a terrorist organization. Morocco requested his extradition and, following proceedings conducted in that regard, the complainant was handed over by Spain to the Moroccan authorities on 14 December 2010.

2.2 Immediately on arrival in Casablanca, the complainant was placed in police custody[1] in a location that he could not identify because he was taken there blindfold. He claims that he was then subjected to repeated sessions of torture, for between four and five days, during which time he was struck with truncheons and slapped by several people, electrocuted, and choked while his head was held in a bucket of water until he fainted, as well as being deprived of sleep, food and water, threatened with rape and undergoing actual rape with a glass bottle. He was allegedly given injections on several occasions, after which he experienced bouts of dementia and unconsciousness. On two occasions, he was driven to a forest in the vicinity of Nador, threatened with death and subjected to a mock execution by shooting. He spent several days in detention in Temara, where he reportedly endured similar torture sessions. He remained there until 23 December 2010, when he was transferred to Casablanca and handed over to the national brigade of the criminal investigation department; he was in a very serious condition, unable to speak or move. Following this treatment, the complainant signed pre-written confessions in Arabic, a language he does not know well. On 24 December 2010, the complainant was brought before the investigating judge from the Salé Court of Appeal, who neither took note of his multiple injuries nor requested that an expert medical examination be carried out.

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[1] In accordance with Decree 03-03 on cases relating to State security and counter-terrorism, a detainee may be held in police custody for three consecutive periods of 96 hours, during which time he or she has no right to counsel.

2.3 After the extradition, his family only learned of his fate through a newspaper article that appeared on 27 December 2010. They then contacted a lawyer, who was able to see the complainant on the same day in Salé II Prison. The lawyer noted that the complainant was terrified and incapable of speaking or moving. The complainant remained in that state for several days, unable to talk about the treatment he had suffered. In the weeks that followed, he refused to lodge a complaint for fear of being tortured again.

2.4 The complainant appeared before the investigating judge again on 18 January 2011. This time, he was accompanied by his lawyer, who made allegations of ill-treatment. The judge, however, refused to take note of them. The complainant did not undergo a medical examination, notwithstanding the stipulation in articles 73, paragraph 5, and 134, paragraph 5, of the Code of Criminal Procedure that the public prosecutor and/or the investigating judge must order a medical examination of the accused when they observe that there are grounds for so doing.

2.5 On 11 February 2011, the complainant's counsel sent a letter to the Minister of Justice to ask for a medical examination to be carried out by independent international experts. On 18 March 2011, the Minister of Justice denied the request, stating that the complainant's incarceration had been lawful and that his rights and dignity had been respected; that he had never complained of having been subjected to acts of torture, either to the Office of the Prosecutor-General or to the investigating judge; that neither the complainant nor his Moroccan counsel had requested any expert medical examination or lodged any complaint about such a matter; and that under Moroccan law, the complainant was still entitled to ask for a medical examination to be conducted by the Moroccan health services.

2.6 On 13 May 2011, the complainant lodged a complaint with the Prosecutor-General at the Rabat Court of Appeal denouncing the acts of torture to which he had been subjected, but the complaint was dismissed on 29 September 2011. He also reported the acts of torture to the National Human Rights Council on 2 May 2011 and 29 July 2011. On 26 May 2011, the Brussels Bar Association addressed a letter to the Minister of Justice of Morocco requesting him to authorize a forensic medical examination by Moroccan and foreign experts.

2.7 The complainant's trial took place before the Rabat Court of Appeal, hearing it in Salé as a terrorism case. The complainant appeared before the Court on 22 April 2011 and 15 September 2011. During the second hearing, his lawyers raised the procedural irregularities in his case, notably the ill-treatment that he had suffered. The Court, however, rejected all their motions, including the application to have the statements made by the complainant while in police custody declared invalid on the grounds that they had been obtained under duress. It also refused to defer consideration of the case pending an effective investigation into the allegations of torture.

2.8 The hearing before the Court took place on 24 November 2011. The complainant was sentenced to 15 years' imprisonment for participating in a terrorist group and obtaining arms for the group. According to the complainant, there is no objective evidence pointing to his involvement in any terrorist group and the case against him consists essentially of the "confession" which was obtained as a result of torture and subsequently retracted.[2] The Court, however, deemed these initial statements, which were drafted in Arabic without the assistance of an interpreter, to be valid because they were reportedly signed by the complainant, even though the Court itself had recourse to the services of an interpreter during the hearings. The Court maintained that the issue of torture had not been raised, although a request for an expert medical examination had been addressed to the Minister of Justice in February 2011 and a complaint of torture, subsequently dismissed, had been lodged in May 2011.

2.9 In Salé II Prison, the complainant does not enjoy confidential interviews with his lawyers, since there is always a man in plain clothes nearby who can hear their conversations. The lawyers have filed complaints about this matter, notably in letters dated 18 November 2011 addressed to the Minister of Justice and to the Director of the Department for Prison Administration and Reintegration, but have received no reply. Concerning his conditions of detention, the complainant asserts that he was held in complete isolation for several months, during which time he could not correspond with his lawyers, his family or his relatives. He was never informed of the rules applied to him or of the grounds for the detention regime, nor was he told of the reasons for the gradual relaxation of this regime.

The complaint

3.1 The complainant considers that the acts outlined herein constitute violations of article 2, paragraph 1, and articles 11, 12, 13 and 15 of the Convention.

3.2 With regard to article 2, paragraph 1, the complainant considers that the State party failed to take all effective measures to prevent him from being tortured. This violation is all the more serious because he drew the attention of the Minister of Justice to the acts in question, requested an expert medical examination and, finally, lodged an official complaint. However, the authorities did not respond.

3.3 The complainant maintains that, if the State party had respected its obligations under article 11, he would not have suffered the treatment inflicted on him in order to obtain his "confession". The State party has been confronted with numerous allegations of torture for years but has not modified its conduct in any way. The Minister of Justice had, however, been made aware of the concerns of the complainant's lawyers regarding his state of health as early as 16 December 2010.

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[2] The judgement reads as follows: "The defence has argued that the defendant was subjected to torture and coercion. Given that there is no reference in the case file to indicate that the defendant or his lawyers raised the issue of torture during the investigation or requested an expert medical examination to prove the torture, the argument is demonstrably unfounded and must be rejected." The judgement further states:

> "Whereas the defendant has denied in detail the accusations against him, before this Court and during the initial hearing.
>
> "Whereas these denials are contradicted by the defendant's confession, during the preliminary phase, to all the charges against him, an unequivocal confession describing in detail the acts imputed to him and containing statements consistent and in agreement with those of defendants A.B. and B.R.B. (…).
>
> "Whereas this confession, clearly stated before the criminal investigation department, is not open to doubt and is held to constitute valid and sufficient evidence (…)."

3.4 Regarding articles 12 and 13 of the Convention, in view of the particular circumstances of the case and the context in which the events took place, there is, undeniably, reasonable ground to believe that the complainant was tortured. He was questioned several times by the Spanish authorities in the course of the two investigations launched against him in Spain for terrorist offences. During three years of inquiries, which concluded with the dismissal of the charges, he consistently denied that he belonged to any terrorist association. It is thus unthinkable that he would suddenly have confessed on being handed over to the Moroccan authorities.

3.5 In Morocco, no prompt, in-depth investigation meeting the standards required under the Convention was conducted. The investigating judge should have taken action as soon as the complainant appeared before him for the first time in December 2010. The Rabat Court of Appeal, sitting in Salé at first instance, neither requested that the documents concerning the allegations of torture be attached to the case file nor ordered that the complaint be investigated. No attempt was made during the investigation into the complaint to identify the perpetrators of the torture, and the investigation was conducted by the same police force that had inflicted the treatment complained of on the complainant. Moreover, neither the public prosecutor's office nor the investigating judge took action when the complainant emerged from police custody in a state of profound shock and bearing numerous signs of the ill-treatment that he had suffered, and, again, it was the Rabat public prosecutor's office that was given responsibility for the investigation.

3.6 The complainant and his defence lawyers have, furthermore, been subjected to pressure and intimidation. The complainant does not feel at all safe in his place of detention.

3.7 The complainant considers that the State party violated article 15 of the Convention because it did not ensure that any statement made as a result of torture could not be invoked as evidence in the proceedings against him.

State party's observations

4.1 In a note verbale dated 11 December 2011, the State party challenged the admissibility of the communication. It informed the Committee that the complainant had been placed in detention immediately on arrival in Morocco on 14 December 2010. The complainant was suspected of belonging to the Harrakat al-moujahidine fi al-maghrib (Al-Mujahidin Movement in Morocco), a terrorist organization. The investigation conducted by the criminal investigation department under the supervision of the public prosecutor's office established that he had been recruited by Abdelkader Belliraj (case concerning the dismantling of the terrorist organization of the same name) and had been involved in the smuggling of firearms into Morocco from Europe (Melilla) between 2002 and 2006. Immediately on arrival in Morocco, he was taken into police custody; the period of custody was extended once, on 18 December 2010, and again, on 22 December 2010, as provided for in article 66 of the Code of Criminal Procedure, which covers police custody in terrorism cases.

4.2 On 24 December 2010, the complainant was brought before the competent investigating judge at the Rabat Court of Appeal. According to the record of the hearing, the complainant did not complain of having been tortured, nor did he ask to be examined by a doctor. He merely affirmed that he had become a member of the jihadist movement in Morocco in 1992. During the second hearing before the judge, on 18 January 2011, neither the complainant nor his lawyer made a complaint of torture, and they did not appeal the judge's decision. On 3 March 2011, the complainant was brought before the Rabat Court of Appeal. In May 2011, he lodged a complaint concerning acts of torture with the Minister of Justice; the complaint was referred to the public prosecutor's office for investigation.

4.3 On 15 September 2011, the complainant's lawyer applied for the police report to be declared invalid on the basis that the statements of the complainant that were contained in the report had been made as a result of torture. The application was rejected by the Court. On 27 October 2011 and the complainant was convicted under articles 293, 294 and 295 of the Criminal Code (criminal association and assistance in crime) and article 218-1, paragraph 9 (participation in an association formed, or in an agreement entered into, for the purposes of preparing or committing acts of terrorism), of the Code. He was sentenced to 15 years' imprisonment. He filed an appeal against this judgement.

4.4 The State party maintained that the communication was inadmissible under article 22, paragraph 5 (a), of the Convention because the complainant had submitted a communication to the Human Rights Committee against Spain in respect of the same facts. Secondly, he had not exhausted all domestic remedies, since his appeal was still being examined by the Court of Appeal. Once that Court had reached a decision, the complainant could still appeal under article 323 of the Code of Criminal Procedure. Furthermore, the complaint addressed to the Minister of Justice by the complainant in May 2011 remained under investigation. Completing the investigation would take some time, particularly since the complainant had not revealed the identities of the persons who had reportedly participated in the acts of torture. The Court had recently issued orders for the complainant to be examined by a doctor in order to verify his allegations of torture.

Complainant's comments on the State party's submission

5.1 On 28 March 2012, the complainant submitted his comments on the State party's observations.

5.2 The complainant maintains that the complaint filed with the Human Rights Committee is not the same as the one before the Committee against Torture. He had submitted a communication to the Human Rights Committee against Spain in order to prevent his extradition to Morocco, owing to the risk of being subjected to torture. The present complaint, on the other hand, concerns the events that took place in Morocco.

5.3 With regard to the exhaustion of domestic remedies, the complainant asserts that there is no procedure in Morocco whereby an individual who complains of having been tortured can compel the State to conduct an impartial and speedy investigation. The lodging of such a complaint has no effect, either de jure or de facto, on the progress of criminal proceedings that are brought based on evidence alleged, in all likelihood, to have been obtained through torture. There is no procedure available to the complainant for suspending the criminal proceedings initiated against him pending a proper investigation of his complaint. The complainant has no such domestic remedy available to him. In this regard, it must be noted that, in its judgement, the Court rejected the application to have the "confession" declared inadmissible on the pretext that the case file contained no reference to allegations of torture.[3] Furthermore, some of the reported violations of the Convention are definitive and could not be "made good" by acquitting the complainant or acknowledging the cruel treatment inflicted on him.

5.4 The complainant expresses concern about the progress of the criminal proceedings initiated in response to his complaint of torture. When he referred to that matter during his trial, the public prosecutor stated that no complaint had been lodged. After the complainant provided proof of submission, the judges maintained that the complaint did not affect the trial. In the meantime, the public prosecutor's office dismissed the complaint, and the complainant was ultimately sentenced to 15 years' imprisonment. The complainant had also brought criminal indemnification proceedings but still had no information as to the outcome. Then, in the context of the proceedings before the Committee, the complainant learned that the investigation into his initial complaint had been reopened. However, given the failure to conduct any inquiries for six months, the complainant feared that the "reopening" of the investigation was a mere sham. He advances as proof the conditions surrounding the only two investigative procedures conducted — namely, his questioning by the police officers responsible for the investigation and his forensic medical examination — which were subsequently the subject of a complaint to the Prosecutor-General at the Rabat Court of Appeal and the Minister of Justice.

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[3] See footnote 2.

5.5 In December 2011, the complainant was questioned by police officers in plain clothes who did not produce badges to identify themselves, indicate to which service they belonged or specify under which procedure they were questioning him. The questioning was conducted in French but the transcript was typed up directly in Arabic, without the presence of an interpreter, which, however, is indispensable for any procedural formality involving the complainant. The police officers presented documents for him to sign, but, since they were in Arabic, he refused to do so. He did not receive a copy of his statement.

5.6 As to the forensic medical examination, the complainant was taken on 8 January 2012, without prior notice, to a hospital located a short distance from the prison.[4] There he met a woman who introduced herself as a forensic doctor and who was accompanied by two male doctors. None of them identified themselves by name. The complainant gave a detailed account of the ill-treatment to which he had allegedly been subjected and he was examined.[5] The interview and examination took place in the presence of five unidentified persons in plain clothes. A radiographic examination of the complainant's left shoulder was performed in the same establishment. The complainant was then transported to another facility for an ear, nose and throat examination, which did not take place because the equipment was not working. No further tests were conducted thereafter. The complainant did not meet with a psychiatrist, and therefore no psychological impact assessment was carried out.

5.7 On 19 March 2012, the complainant wrote to the Prosecutor-General requesting, inter alia: an examination of his left shoulder and the necessary medical care, since he could not lift his arm in the normal way and without experiencing pain; an ear, nose and throat examination; a neurological examination, given that he had experienced a significant loss of sensitivity in his limbs since the events complained of; and a psychiatric examination, as he was suffering from insomnia, stress and anxiety, among other symptoms. In the same letter, he applied for permission to designate one or more medical consultants and to have the expert medical examination conducted by a neutral international body (the International Rehabilitation Council for Torture Victims) so that the equality of the parties would be ensured when the examination was conducted. He also asked to be assisted by counsel throughout the investigation procedure. He further requested access to a photograph album containing pictures of all the persons who had had charge of him on his arrival in Morocco, so that he could identify his aggressors. No reply to this letter has been received.

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[4] This was the Bin Sana Hospital in Rabat, according to the report drawn up by the Office of the Prosecutor-General.

[5] According to the medical report, he stated that he had been "assaulted repeatedly with a blunt instrument and slapped and kicked while bound at the wrists and ankles and blindfolded. He further states that police officers penetrated his anus with a glass bottle. Mr. Ali Aarrass reports that, during the torture, he experienced generalized pain, ringing in his ears and bleeding from his left ear and his anus, and that he lost consciousness several times, requiring him to be attended by a doctor, who injected him intravenously in the crook of each arm twice at an interval of two days, with an unidentified drug, before administering an intramuscular injection in his left buttock. He states that he also suffered a cigarette burn on the ulnar side of his right hand, which resulted in blistering". The conclusion of the report is as follows: "The clinical examination of Mr. Ali Aarrass performed on 8 December 2011 (sic) revealed no sign of injuries that could have been caused by the acts of torture that Mr. Aarrass alleges took place during his pretrial detention."

5.8 The complainant states that the inquiry was opened only after a considerable delay and evidence has therefore been lost. In addition, he has not been informed of the status of the inquiry, and his lawyers have not been authorized to assist him in that connection or been invited to provide any comments that they might wish to make. A number of basic required steps have not been taken, such as the organization of a *confrontation* (a face-to-face meeting among all concerned parties), the provision of a compilation of photographs of persons who may have been his assailants, the transmittal of the prison file containing photographs of the complainant, etc. Neither he nor his counsel were informed that he was going to be interviewed and examined by a physician, nor was his consent to that evaluation sought. Since the defence was not given the opportunity to request that certain inquiries be made, the report on the investigation into his complaint of torture is woefully incomplete. The complainant therefore concludes that there was no effective remedy that he could have used to demonstrate that he was tortured or to prevent himself from being convicted on the basis of confessions obtained under torture.

5.9 With regard to the State party's observations, he emphasizes that it is paradoxical to say, on the one hand, that an investigation into his allegations of torture is being conducted and, on the other, to state that the allegations are untrue because there is no mention of them in the transcripts of the hearings held by the investigating judge. Reports from international organizations attest to the existence of repeated cases of torture in Morocco, along with unfair trials and the impunity that prevails in that regard. The fact that his complaints were not initially reflected in the records of the proceedings in no way supports the conclusion that he had not been subjected to inhuman and degrading treatment.

5.10 The complainant notes that cases involving charges of terrorism are heard by judges who specialize in such proceedings. It can therefore be supposed that the judges responsible for his case file are the same ones who, in the past, have helped members of the Moroccan police and the National Surveillance Directorate (DST) to escape punishment for violations of the fundamental rights of accused persons and allowed statements obtained under torture to be used as evidence in legal proceedings. In particular, the involvement in his case of investigating judge C., who specializes in terrorism cases, and of trial judges at first instance who reportedly issued rulings in the Belliraj case gives reason to believe that torture could have been used yet again in the claimant's case.[6] The complainant refers to the Committee's concluding observations regarding Morocco, in which the Committee observed with concern that a climate of impunity appears to have taken hold in the country[7] with respect to violations of the Convention. He also refers to the judgement handed down in *Boutagni v. France*, in which the European Court of Human Rights noted that international reports on the human rights situation in Morocco all denounced the ill-treatment of people suspected of taking part in terrorist acts.[8]

5.11 The complainant states that he was powerless to ensure that any particular piece of information was recorded in the transcripts of his hearings, whether during his time in custody or during his appearance before the investigating judge. During his arraignment, the investigating judge was "introduced" to him as the chief of the officials who had been questioning him, which is why he decided not to lodge any complaint with the judge. Nevertheless, given his physical condition at the time, the investigating judge should have ordered that medical examinations be performed. During his second appearance, when he was assisted by counsel, the complainant retracted his "confession" and complained of acts of torture, but that statement was not recorded in the transcripts. The complainant could not compel the judge to abide by the law. What is more, the judge knew what had occurred and would already have taken action had he intended to do so. Lastly, the complainant complained to the Minister of Justice and filed a criminal complaint. No action was taken, and no type of investigation was undertaken until later on, when the inquiry was reactivated. The complainant fears that the inquiry will not be pursued in earnest, given its slow pace, ineffectiveness, lack of transparency and the fact that objective evidence from both sides is not being sought, as demonstrated by the supposedly expert examination performed on the complainant.

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[6] The complainant states that people who were prosecuted in the Belliraj case said that they had been subjected to ill-treatment and torture, but that no action was taken on their complaints.

[7] Concluding observations of the Committee against Torture regarding the fourth periodic report of Morocco, adopted on 17 November 2011 (CAT/C/MAR/CO/4), para. 16.

[8] European Court of Human Rights, *Boutagni v. France*, No. 42360/08, judgement of 18 November 2010, para. 46.

5.12 He notes that, in its observations, the State party does not dispute the fact that the charges brought against the complainant are chiefly based on the statements that he is said to have made while in police custody and that were confirmed during his initial examination before the investigating judge. Yet, throughout the rest of the proceedings, the complainant has said that those confessions are not valid.

5.13 The State party makes no mention of the dismissal of the complaint in September 2011 and gives no explanation for that decision. Nor does it explain why the inquiry was reopened or why it was reinitiated at that particular point in time. It says nothing about the type of expert examination requested, the doctor who was instructed to perform it, the tests that were done or their results. The State party does not address the fact that no interpreter assisted the complainant while he was in police custody or that he was asked to sign documents written in Arabic. Photographs were apparently taken of the complainant upon his arrival at the Salé II Prison. However, they were not produced during the proceedings in order to verify his claims about his physical condition. On 21 March 2012, the complainant's attorneys wrote to the Minister of Justice, the Prosecutor-General at the Rabat Court of Appeal and the director of the prison and requested access to those photographs and to the complainant's prison file, but their letters went unanswered.

Additional information from the parties

Information from the complainant

6.1 The complainant has written to the Committee on several occasions about events that have occurred since the time that he submitted his comments on the State party's observations. He states that on 18 April 2012, the Prosecutor-General again dismissed the complaint of torture that he had filed in May 2011 on the grounds that his claims had not been substantiated. No action has been taken on his request for the initiation of criminal indemnification proceedings either. The complainant again sent requests to the Minister of Justice and the Rabat Prosecutor-General for, among other things, the reports concerning his hearing of 7 January 2012 and the forensic medical examination of 8 January 2012 and for the photographs of him that were taken upon his arrival at the Salé II Prison, because he believed that they could provide information that could have a bearing on his appeal against his conviction.

6.2 The reports on the expert medical examination and the hearing were communicated to the complainant on 29 May 2012. However, these reports were prepared by the same services whose members had tortured him and contain irregularities. For example, the statement he made to the investigators is signed, whereas he did not sign anything during the interview because he could not understand the transcripts drafted in Arabic. He maintains that he did not say that he had fully recovered, yet the report says just the opposite. It also says that the complainant's body no longer bore any sign of ill-treatment, yet his sister saw such signs on his wrists and behind his right ear and his wife saw marks of cigarette burns. The complainant also received a photograph, but it is the one on his arrest sheet, not the one taken by prison personnel upon his arrival at Salé II Prison. The expert medical report is one-sided and contains errors. For example, it says that an ear, nose and throat examination was performed, which is not the case.

6.3 At the request of the complainant's counsel, Dr. B., who is a doctor and an independent expert on torture, gave his opinion on the medical report and concluded that a complete medical and psychological examination in accordance with the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) should have been carried out. Such an examination includes tests performed by independent physicians who specialize in evaluating people who are thought to have been subjected to torture. The report does not provide details on the tests that were done and gives almost no detailed information on the results of those tests. The doctors did not attempt to obtain the reports of the doctors who examined the complainant while he was in police custody or in prison. The report does not say whether the examination took place in the presence of police officers or prison personnel or whether the complainant was handcuffed or otherwise physically restrained. The substantive portion of the report consists of one and a half pages, and mention of his claims that he was tortured is limited to just two short sentences. The report contains no diagrams or photographs. All the report does is to note the existence of scars on his lower extremities from an old road traffic accident. There is no indication that the complainant's allegations were evaluated. Since the examination took place over a year after his arrest and it was therefore unlikely that there would be visible marks on his body, a complete, full-body examination would have been called for. Furthermore, the report makes no mention of any psychiatric or psychological assessment, which demonstrates that the examination did not meet international standards for the evaluation of claims of torture.

6.4 The report on the expert medical examination and Dr. B's report were submitted to Dr. H.B., a Moroccan physician who specializes in the detection of torture. He describes the forensic medical report as being "so brief that neither the Board nor the parties concerned can be confident that Mr Ali Aarrass actually underwent a complete, thorough examination. The brevity of the report is evident at all levels … The conclusions are equally terse and are not in line with the recommendations made in the Istanbul Protocol, since the expert must not merely say whether or not physical sequelae associated with acts of torture are present but must also provide his or her opinion as to the degree of consistency between all the evidence obtained from physical and psychological observations, diagnostic test results, the expert's knowledge of methods of torture used in the region, consultation reports … and the allegations of abuse … Any shortcomings in the psychological evaluation of a person claiming to have been tortured is a serious failing and an unacceptable lapse on the part of the expert in terms of the standards set out in the Istanbul Protocol." Dr. B. concludes that the report in question "is very brief, provides little information, was not prepared in accordance with the proper procedures and fails to meet the accepted international minimum standards set out in detail in the Istanbul Protocol for medical evaluations of persons who claim to have been tortured".

6.5 "A complete physical and psychological medical re-evaluation of Mr. Ali Aarrass should therefore be undertaken by physicians with experience in investigating and documenting claims of torture. These examiners should be provided with the time and the discretionary authority to make use of any and all methods of medical investigation, diagnostic tests and other consultations as may be needed to arrive at sound, reasoned conclusions."

6.6 According to the complainant, in accordance with the principle of the right of response, a thorough expert medical evaluation is essential in order to gather concrete evidence concerning his claims of torture. This process would entail providing advance notice to the complainant and his counsel of the arrangements made for doctors' visits, allowing the complainant to be assisted by his lawyer and a medical consultant on those occasions, giving the complainant access to the results of his clinical tests, and carrying out any supplementary tasks and examinations requested by the complainant's defence counsel with a view to obtaining a complete analysis of his state of health and his claims.

6.7 When appearing before the court on 18 June 2012, the complainant repeated his request for an effective and independent inquiry into his claims of torture and, in particular, for a rigorous expert medical evaluation. Because he felt that a thorough inquiry was called for, the complainant submitted an application for the institution of criminal indemnification proceedings to the presiding judge of the court of first instance of Rabat[9] on 18 September 2012. This application was declared inadmissible on 28 January 2013, with the judge basing his decision on the fact that the complainant had not identified his torturers and had not specified the articles of the Criminal Code under which the acts of torture in question constituted a criminal offence.

6.8 The complainant has informed the Committee that he is the target of continual acts of intimidation in prison. His lawyers are not always informed when hearings are to be held and, as a result, he sometimes has to appear without counsel. He is not provided with proper health care, and he is prevented from corresponding with his lawyers and his family. After being held in total isolation for months (no communication whatsoever with fellow prisoners or guards; no reading materials, radio or television; he was allowed in the exercise yard only when no one else was there; etc.), he was placed in a cell with four people convicted on drug charges who were particularly rough and abrasive. Twice he has been assaulted by another prisoner without any guard stepping in to protect him. In July 2012, with no reason being given, he was placed in isolation again and allowed to go out into an individual exercise yard for just one hour per day. He was returned to a regular cell shortly before the Special Rapporteur on torture visited Morocco. After he met the Special Rapporteur on 20 September 2012,[10] the complainant was threatened by the deputy director of the prison. His lawyers have written to the Moroccan authorities numerous times about the pressure and threats directed at him, his ill-treatment[11] and the denial of medical treatment, but have received no response.

6.9 On 1 October 2012, the Criminal Division of the Rabat Court of Appeal upheld the complainant's conviction and his sentence of 12 years' imprisonment for violating the Anti-Terrorism Act. The Court stated that "the court of first instance ruled properly on all requests and arguments for the defence. This Court therefore upholds all such rulings as meeting all the requirements of the law, especially in respect of the defendant's claim to having been tortured, inasmuch as an expert medical examination was performed by three physicians, all of whom confirmed that the defendant had not been subjected to torture of any sort. The Court therefore finds that the verdict handed down by the criminal court of first instance was justified and thus upholds it on appeal as set forth herein."[12] The Court also upheld the sentence set by the court of first instance and endorsed the reasoning on which it was based. In October 2012, the complainant filed an appeal with the Court of Cassation.

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[9] The complainant asked the court of appeal to grant a stay of the ruling pending the outcome of the investigation.

[10] In a letter from the Special Rapporteur to the Moroccan authorities which was made public on 31 May 2013, the Special Rapporteur indicated that the independent forensic physician who had accompanied him to Morocco had performed an external physical examination of the complainant and concluded that most of the marks that he had found were consistent with the complainant's claims (cigarette burns, signs that he had been beaten on the soles of both feet, that he had been bound up tightly and hung by his wrists, and that electric shocks had been applied to his testicles). The physician also found that the complainant's description of his symptoms after being subjected to torture and ill-treatment was entirely compatible with his claims and with the types of practices and methods described and the claims made by other witnesses whom the Special Rapporteur met in other places of detention and who were unknown to Mr. Aarrass.

[11] A list of the letters is included in the Committee's case file.

Information submitted by the State party

7.1 On 20 March 2014,[13] the State party informed the Committee that the complainant had apprised the Ministry of Justice of his allegations of torture and ill-treatment in February 2011 and had been advised to lodge a criminal complaint. A preliminary inquiry into that complaint had been undertaken by the criminal investigation department at the request of the Prosecutor-General, but the findings did not provide the Prosecutor with a basis for opening an investigation. At the insistence of the complainant, the public prosecutor's office ordered two additional measures in December 2011: another interview with the criminal investigation department and a forensic medical examination. The evidence collected by these means was transmitted to the complainant in April 2012.

7.2 The Moroccan authorities have devoted a great deal of attention to this complaint in the course of a constructive exchange of information with United Nations human rights mechanisms. Within this framework, the Special Rapporteur on torture, accompanied by a physician, spoke to the complainant on 20 September 2012 at Salé Prison. Other special procedures have also considered the complainant's case.

7.3 In response to the allegations which were made by the Special Rapporteur and which were formally communicated to the authorities on 4 December 2012, members of the National Human Rights Council and three physicians went to Salé Prison on 25 and 26 December 2012 to investigate the claims that the complainant had been tortured in police custody and the allegations concerning the use of ill-treatment, duress and intimidation by prison officials. The administrators of the prison had already begun to look into the matter before the visit by members of the National Human Rights Council.

7.4 As for the complainant's allegations concerning his treatment following his meeting with the Special Rapporteur on torture, the State party notes that inquiries were undertaken in October and December 2012 by the Office of the Inspector General for the Prison System and that all those involved were interviewed. Its findings indicate that these allegations are essentially the result of the complainant's vexation with various routine measures taken by prison officials. The complainant mistakenly believed that these lawful measures were directed at him alone, in view of several incidents that occurred during that period, and interpreted them as being attempts at intimidation or reprisals.

7.5 With regard to the question of the complainant's conditions of detention in general, the State party notes that the complainant was placed in an individual cell — not an isolation cell — at his request. At the time of the Special Rapporteur's visit, the complainant was not being held in isolation and was not subject to any disciplinary measures. The complainant had asked to be in a one-person cell when he was placed in pretrial detention. Although the facility is overcrowded, an individual cell was found for him. He remained in the same cell after his conviction.

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[12] According to a French translation of the judgement provided to the Committee by the complainant.

[13] Reminders were sent to the State party by the Committee on 15 June 2012, 15 August 2012, 11 October 2012, 6 December 2012, 21 December 2012 and 25 February 2014, inviting it to submit its observations on the merits.

7.6 As to his allegations concerning a lack of medical care, the State party notes that, since his arrival at Salé Prison, the complainant has had 11 medical appointments. Following the visit to the prison by personnel of the National Human Rights Council on 25 and 26 December 2012, the development of a more targeted medical treatment schedule that includes psychological counselling has done a great deal to defuse the tension surrounding the issue of the complainant's conditions of detention.

7.7 Since he was incarcerated, the complainant has gone on hunger strike several times (most recently on 10 July 2013) to protest against the conditions in which he is being held. Following the intervention by the National Human Rights Council and a number of meetings between the complainant and prison administrators, including face-to-face meetings between the various parties, the complainant decided to end his strike. On 3 August 2013, he received a visit from the Director of the Department of Prison Administration who assured him that every effort would be made to ensure that the requested medical examinations would be performed and that instructions would be given to make sure that his fundamental rights as a prisoner were respected. On 6 August, he was examined by a urologist and given a general check-up in the presence of members of the National Human Rights Council. That examination showed that the complainant does not suffer from any problems whatsoever that would endanger his health.

7.8 Thanks to the successful mediation of the National Human Rights Council, the dialogue between the prisoner and prison administrators has been resumed. Prison officials have given assurances that they will regularly update the National Human Rights Council and the Inter-Ministerial Human Rights Delegation on the situation of the complainant.

Further information submitted by the complainant

8. On 31 March 2014, the complainant reiterated his earlier claims and emphasized that he continued to be subjected to pressure by the authorities.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 Before considering any claim contained in a complaint, the Committee against Torture must decide whether the complaint is admissible under article 22 de la Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. It notes that issues relating to the arrest and trial of the complainant have been brought to the attention of a number of different special procedures of the Human Rights Council, including the Special Rapporteur on torture and the Working Group on Arbitrary Detention. However, the Committee considers that extra-conventional procedures or mechanisms established by the Commission on Human Rights or the Human Rights Council, whose mandates are to examine and report publicly on human rights situations in specific countries or territories or on cases of widespread human rights violations worldwide, do not generally constitute an international procedure of investigation or settlement within the meaning of article 22, paragraph 5 (a), of the Convention. The Committee therefore considers that the abovementioned provision does not preclude it from considering the present complaint.[14]

9.2 In accordance with article 22, paragraph 5 (b), of the Convention, the Committee does not consider any communication unless it has ascertained that the complainant has exhausted all available domestic remedies. In this instance, the Committee takes note of the fact that a complaint of torture was lodged with the Prosecutor-General at the Rabat Court of Appeal on 13 May 2011. That complaint was dismissed, reactivated and subsequently dismissed once again, on 18 April 2012, on the ground that the claims had not been substantiated. The Committee also notes that when he was on trial at the Rabat Court of Appeal, Mr. Aarrass reported that he had been tortured. Accordingly, the Committee concludes that domestic remedies with respect to Mr. Aarrass' complaint that he was tortured while being held in police custody have been exhausted.

9.3 The other admissibility requirements having been met, the Committee considers the communication to be admissible and proceeds to its consideration of the claims on the merits under article 2, paragraph 1, and articles 11, 12, 13 and 15 of the Convention.

Consideration of the merits

10.1 The Committee has considered the complaint in the light of all the information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

10.2 The Committee takes note of the claims by the complainant that he was placed in police custody on 14 December 2010 and subjected to torture sessions until 23 December 2010 for the purpose of extracting a confession from him; that he was then forced to sign a so-called confession, which had been written beforehand in Arabic, a language that he does not know well; that during this period his family was not informed of his whereabouts and only discovered where he was through the press on 27 December 2010; that he did not have access to a lawyer until that date; that the investigating judge neither documented his injuries at his hearing on 24 December 2010 nor requested a medical evaluation; and that when he made his second appearance before the investigating judge on 18 January 2011, this time accompanied by his lawyer, he made a complaint about being tortured in custody, but his allegations were not written down and the judge failed to order a medical examination. Concerning these allegations, the Committee also takes note of the State party's comments that neither the complainant nor his lawyer made a complaint about torture at the hearing held on 18 January 2011.

10.3 The Committee recalls its jurisprudence concerning certain basic guarantees that must be applied to all persons deprived of their liberty in order to prevent them from being subjected to torture. These guarantees include the right of detainees promptly to receive independent legal assistance and independent medical assistance and to contact relatives.[15] The Committee also recalls its concluding observations on the fourth periodic report of Morocco. In that document it noted with concern that under the Anti-Terrorism Act No. 03-03 of 2003 access to a lawyer is not permitted until after the sixth day, which places suspects who are being held in custody at greater risk of torture. The Committee added that it is precisely while they cannot communicate with their families and lawyers that suspects are most vulnerable to torture.[16] In this context, considering the fact that the complainant was not guaranteed access to legal assistance, particularly during his time in custody, that he had no contact with his family, that his family had no information about his place of detention, that he had no access to a doctor and that he was allegedly forced to sign statements in a language that he does not know well, and in view of the absence of information from the State party challenging those claims, the Committee considers the State party to have failed in its obligations under article 2, paragraph 1, and article 11 of the Convention.

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[14] See also, for example, communication No. 1806/2008, *Saadoun v. Algeria*, Views of the Human Rights Committee adopted on 22 March 2013, para. 7.2.

[15] General comment No. 2 (2007) on implementation of article 2 by States parties, *Official Records of the General Assembly, Sixty-third Session, Supplement No. 44* (A/63/44), annex VI.

[16] CAT/C/MAR/CO/4, para. 8.

10.4 With regard to articles 12 and 13 of the Convention, the Committee has taken note of the complainant's allegations that the investigating judge neither launched an inquiry nor ordered a medical examination and refused to take note of his allegations of torture; that, on 11 February 2011, he wrote to the Minister of Justice to request a medical examination by independent experts, a request that was denied; that, on 13 May 2011, he lodged a complaint of torture with the Prosecutor-General at the Court of Appeal, but the complaint was dismissed and then subsequently reactivated; that he was only questioned by the police about his complaint in December 2011 and was only examined by a forensic doctor in January 2012; that his requests for an examination by doctors from an independent institution were denied; and that his request for access to the photographs taken upon his arrival at the prison was also denied. The Committee also takes note of the opinion of two medical doctors that the report produced by the forensic doctor after examining the complainant in January 2012 was not in conformity with the Istanbul Protocol.

10.5 The Committee notes that, notwithstanding the letter which the complainant sent to the Minister of Justice in February 2011, no medical examination was undertaken and, in the context of his criminal complaint, an examination was only undertaken in January 2012, which was more than a year after the alleged events. Moreover, in the context of this complaint, the complainant was only granted a hearing in December 2011 and was not informed at any time prior to that date of the status of the proceedings or even the fact that the proceedings had been reactivated. The Committee also notes that the State party failed to provide any information about the outcome of the investigation and the evidence made available to the authorities; it merely affirmed that the information gathered had been communicated to the complainant. The Committee, furthermore, draws attention to the fact that the Court of Appeal took no account of the claimant's allegations of torture when deciding to convict him; it even went so far as to deny that the allegations had been made during the proceedings.

10.6 In the light of the above, the Committee considers that there was a failure on the part of the authorities to conduct an investigation and that this was incompatible with the State party's obligations under article 12 of the Convention to ensure that the authorities proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed. By failing to meet this obligation, the State party has also failed to guarantee the right of the complainant to lodge a complaint in accordance with its responsibilities under article 13 of the Convention, which presupposes that the authorities provide a satisfactory response to such a complaint by launching a prompt and impartial investigation.[17]

10.7 The complainant claims that he is a victim of a violation of article 15 of the Convention, as he was convicted on the basis of a case mainly consisting of a "confession" that was obtained under torture during his time in custody and subsequently retracted.

10.8 The Committee recalls that, pursuant to this article, the State party must ensure that any statement which is established to have been made as a result of torture is not invoked as evidence in any proceedings. From a reading of the Court of Appeal rulings, it is clear that the complainant's confession had a decisive impact on the conviction. The Committee takes note of the complainant's allegations concerning the torture to which he was subjected while in custody and notes that the complainant was examined on 20 September 2012 by an independent doctor who accompanied the Special Rapporteur on torture during his visit to Morocco and who concluded that most of the marks found on the complainant's body and the symptoms experienced by the complainant were consistent with his allegations; that, as previously stated, the State party has failed in its duty to proceed to a prompt and impartial investigation into the allegations of torture; and that the Court of Appeal did not give serious consideration to the allegations of torture when convicting the complainant on the basis of his confession, even going so far as to deny that those allegations had been made during the proceedings. On the basis of this evidence, the Committee considers that the State party has breached its obligations under article 15 of the Convention. The Committee recalls that, in its concluding observations on the fourth periodic report of Morocco, it expressed concern about the fact that confessions are commonly used in the State party's current system of investigation as evidence for prosecutions and convictions and that convictions in many criminal cases, including terrorism cases, are based on confessions, thus creating conditions that may provide more scope for the torture and ill-treatment of suspects.[18]

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[17] Communication No. 376/2009, *Bendib v. Algeria*, Committee Decision of 8 November 2013, para. 6.6.

11. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of the view that the information before it discloses a violation of article 2, paragraph 1, and articles 11, 12, 13 and 15 of the Convention.

12. Pursuant to rule 118, paragraph 5, of its rules of procedure (CAT/C/3/Rev.6), the Committee urges the State party to inform it, within 90 days from the date of transmittal of the present decision, of the measures that it has taken in accordance with the observations set forth above. These measures must include the initiation of an impartial and in-depth investigation into the complainant's allegations. Such an investigation must include the conduct of medical examinations in line with the Istanbul Protocol.

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[18] CAT/C/MAR/CO/4, para. 17.

Communication No. 478/2011: *Kirsanov v. Russian Federation*

Submitted by:	Sergei Kirsanov (not represented by counsel)
Alleged victim:	The complainant
State party:	Russian Federation
Date of complaint:	11 July 2011 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 14 May 2014,

Having concluded its consideration of complaint No. 478/2011, submitted to the Committee against Torture by Sergei Kirsanov under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1. The complainant is Sergei Kirsanov, a national of the Russian Federation, born on 30 November 1969. The complainant claims to be a victim of violations by the State party of articles 1, 4, 12, 13, 14 and 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter "the Convention"). Although it was not raised explicitly by the complainant, the communication may raise issues under article 16 of the Convention. The complainant is not represented by counsel.

The facts as submitted by the complainant

2.1 The complainant submits that, on 28 September 2001, Samara Regional Court convicted him for murder, that he was sentenced to life imprisonment, and that at the time of the submission he was serving a life sentence in the Permsk regional prison.

2.2 The complainant submits that in 2001, during the pretrial investigation, he spent an excessive amount of time (almost four months) in temporary confinement ward No. 2 in the city of Tolyatti, and that his detention in that ward violated the provisions of Federal Law No. 103 on the detention in custody of suspects and those accused of having committed crimes, adopted on 15 July 1995, which provides that arrested individuals may be held in temporary confinement wards for no more than 10 days.

2.3 The complainant submits that, while in detention in the temporary confinement ward, he was subjected to torture and inhuman treatment. He submits that most of the other detainees were smokers, and that he was exposed to passive smoking all the time. He was not allowed to leave the cell for walks and had no possibility of exercising. He was fed only once a day and the food was of bad quality. There was no plumbing, toilet or ventilation in the cell. Instead of a toilet, the detainees used a metal bucket, and he had no privacy when using it as there were other people present in the cell. There was no running water and the detainees were given a bucket of water. The detainees were taken to toilets outside the cell twice a day to empty their buckets and to get drinking water. The complainant also submits that he was not given bedding or basic toiletry items. The complainant contends that this was done on purpose, so he could not sleep and rest at night. The complainant submits that this was done in order to pressure him into admitting the crime of which he was accused. He also claims that because of the conditions in the temporary confinement ward, he was not able to prepare for his trial.

2.4 The complainant submits that his defence attorney, appointed ex officio, did not assist him properly during the trial, and refused to assist him in complaining about torture and inhuman treatment in the temporary confinement ward.

2.5 The complainant submits that he complained about ill-treatment to the first instance court during his trial, but that the court disregarded his complaints.

2.6 The complainant submits that, on an unspecified date, he filed a complaint with the Prosecutor's Office regarding the duration and the inhuman conditions of his detention in the temporary confinement ward. On 26 June 2006, the Prosecutor's Office of Samara Region responded in a letter that at the time of the complainant's confinement, decisions regarding where and for how long to hold suspects in pretrial detention were under its jurisdiction. The letter confirmed that the complainant had been kept in the temporary confinement ward from 14 December 2000 to 2 May 2001 and that the conditions in the ward were substandard. The letter also stated that at the time of the inquiry the temporary confinement ward was closed for renovation, and that there was no possibility of subjecting any officials to disciplinary action because the prosecutor who was in charge at the time of the complainant's detention had been dismissed in 2002 and the director of the ward had retired in 2003.

2.7 The complainant submits that, on an unspecified date, he filed a complaint with the Prosecutor's Office requesting recognition that his lengthy confinement in the temporary confinement ward in inhuman conditions constituted torture and demanding prosecution of the officials responsible. His complaint was rejected on 27 December 2008 as a result of a ruling by an investigator. He appealed the rejection to Avtozavodsky District Court, however in a ruling made on 22 June 2009, the Court, while recognizing that the complainant had been detained for an excessive amount of time and in substandard conditions, refused to recognize that that treatment constituted torture and refused to order a criminal investigation. The complainant's subsequent cassation appeal and request to Samara Regional Court for a supervisory review were also rejected, on 21 August 2009 and 20 November 2009 respectively. On 10 March 2010, the complainant's final appeal was rejected by the Supreme Court of the Russian Federation. The complainant contends that he has exhausted all available and effective domestic remedies.

The complaint

3.1 The complainant claims that the inhuman conditions of his detention at the temporary confinement ward amounted to torture. He submits that the sheer length of his detention also amounted to torture and degrading treatment, which was perpetrated by the State in order to elicit a confession, in violation of article 15 of the Convention.

3.2 The complainant also submits that the State party violated his rights under articles 12 and 13 of the Convention, by failing to investigate his torture claims. The complainant further submits that the 22 June 2009 ruling by Avtozavodsky District Court violated article 4 of the Convention, because the Court failed to recognize the acts of the State officials, who placed and kept the complainant in the temporary confinement ward, as torture and refused to open a criminal investigation.

State party's observations on admissibility and on the merits

4.1 On 27 December 2011, the State party described the facts regarding the complainant's conviction. In addition, it submits that his allegations of torture and cruel treatment were studied by the first instance criminal court and that they "could not be confirmed". It further submits that, on 5 December 2008, Samara District Court reviewed the complainant's civil claim for moral damages caused by his prolonged detention in humiliating conditions in the temporary confinement ward. The Court found that, in violation of article 13 of the Federal Law on the detention in custody of suspects and those accused of having committed crimes, the complainant was held in the temporary confinement ward from 14 December 2000 to 2 April 2001 and again from 25 June 2001 to 24 July 2001. The Court also found that the complainant's allegations regarding some of the conditions were true, namely that he had not been provided with bedding or toiletry items, that there was no table, toilet or sink in the cell, that showers were seldom allowed and then only with cold water, and that no walks outside the cell were allowed. The Court stated that other allegations made by the complainant could not be confirmed, namely that there were insects in the cell, that the light was always on, that there was no ventilation, and that he was only fed once a day. The Court awarded the complainant 10,000 roubles of compensation for moral damages.

4.2 The State party submits that, since the complainant was awarded just compensation by the civil court, he has lost his "victim" status and therefore his communication to the Committee is inadmissible.

4.3 The State party also submits that, in 2010, the complainant entered into correspondence with the European Court of Human Rights in connection with his detention in the Tolyatti temporary confinement ward. The State party maintains that his application, registered under No. 47448/10, was declared inadmissible by the European Court, and that his communication before the Committee against Torture is therefore inadmissible under article 22, paragraph 5 (a), of the Convention. The State party further submits that the communication is not sufficiently substantiated and constitutes an abuse of the right of submission.

Complainant's comments on the State party's observations

5.1 On 31 January 2012, the complainant contested the State party's submission that the first instance criminal court had reviewed his allegations of torture and cruel treatment. He submits a copy of the Supreme Court's cassation decision, dated 29 April 2002, which states that the allegations by the complainant that he had been subjected to pressure by the investigating officers and that they had used unlawful methods of investigation were unfounded and were not taken into consideration. He further refers to the decision of Samara District Court on his civil claim for moral damages, which confirmed violations of the Federal Law on the detention in custody of suspects and those accused of having committed crimes, with regard to the complainant. He maintains that the above-mentioned decision demonstrates that the criminal courts failed to investigate his allegations and that the verdict against him and the subsequent decisions of the higher courts were based on evidence collected through unlawful methods of investigation.

5.2 With regard to the State party's submission that he had lost his "victim" status because he had been awarded compensation, the complainant emphasizes that he had to file a civil law suit in order to obtain the compensation and that the issue of opening a criminal investigation into his allegations of torture falls outside the jurisdiction of the civil courts. Furthermore, the civil court decision did not declare that torture or degrading treatment had taken place in violation of article 21, paragraph 2, of the Constitution of the Russian Federation. The complainant further maintains that the State party violated its obligation under article 4, paragraph 1, of the Convention to ensure that all acts of torture are viewed as offences under its criminal law. In addition, he maintains that the State party violated his rights under articles 14 and 15 of the Convention.

5.3 With regard to the State party's submission that his communication was inadmissible because it had been reviewed and rejected by the European Court of Human Rights, the complainant submits that in 2010 he addressed an application to the European Court regarding violations of his right to defence because of the inadequate legal assistance provided by his defence attorney. He submits that he was informed in a letter dated 18 August 2010 that his application had been registered with the number 47448/10 and was subsequently informed in a letter dated 24 September 2010 that his application had been rejected. The complainant points out that the last decision of Avtozavodsky District Court relating to his detention in the temporary confinement ward entered into force on 21 August 2009 and that his application was not submitted to the European Court until 7 June 2010, and therefore, even if it was on the same subject, it would have been rejected since it was submitted after the six-month deadline.

5.4 With regard to the State party's submission that the communication is not sufficiently substantiated and constitutes an abuse of the right of submission, the complainant notes that the State party does not address the substance of his complaint, namely the refusal by its authorities to recognize that he had been subjected to torture and the refusal to initiate a criminal investigation into his allegations. He maintains that he has substantiated his allegations and makes reference to the decision of Samara District Court on his civil claim for moral damages.

State party's further observations

6.1 On 17 August 2012, the State party reiterated its submission regarding the criminal charges and conviction against the complainant. It reiterates that his "arguments" that the investigating officers had used unlawful methods of investigation were "verified" by the court and could not be confirmed, since they were "refuted" by the "body of evidence" reviewed by the court. The State party further reiterates the content of the 5 December 2008 decision of Samara District Court (see para. 4.1 supra). It further states that on 27 December 2008, an investigating officer from the Tolyatti Investigative Committee issued a ruling refusing the initiation of a criminal prosecution against the person who held the position of head of the temporary confinement ward at the time of the complainant's detention. It maintains that the investigation revealed that the complainant and his accomplice would be killed if they were transferred to the regular pretrial detention facility, because their crimes had affected the interests of organized crime groups.

6.2 In response to the complainant's statement that he still considers himself a victim of violations of the Convention, the State party submits that the domestic civil court ruled in his favour, and that in determining the size of the compensation, the court took into consideration not only the "degree of guilt" of the perpetrator and "other relevant circumstances" but also the degree of physical and moral suffering "connected with the plaintiff's individual characteristics" and the requirements of reasonableness and justice.

6.3 In response to the complainant's allegation of a violation of article 4, paragraph 1, by the State party, the latter submits that article 117 of its Criminal Code defines torture and that it could not be confirmed that the complainant had been subjected to torture. The State party submits that the complainant had submitted numerous complaints in that regard and that the Prosecutor's Office had repeatedly refused to open a criminal investigation, with the latest refusal dated 27 December 2008, since no evidence of a crime had been found. The complainant appealed the 27 December 2008 decision to Avtozavodsky District Court, which rejected his appeal on 22 June 2009. His subsequent cassation appeal was rejected too, on 21 August 2009, by Samara Regional Court. The court decisions confirm the conclusion of the investigation that no crime took place. Accordingly, the complainant's communication "is not subject to review under article 22 of the Convention".

Complainant's further information

7.1 On 17 September 2012, the complainant made reference to articles 9, 10, 11, 95 and 108 of the Criminal Procedure Code of the Russian Federation and maintains that his detention in violation of Federal Law No. 103 on the detention in custody of suspects and those accused of having committed crimes constituted a violation of the Criminal Procedure Code. He further makes reference to a ruling of the Constitutional Court of the Russian Federation that stated that not only should the decision on a case be just but so should the entire criminal procedure.[1] He also alleges other violations of the Criminal Procedure Code.

7.2 The complainant also submits that he was not provided with a lawyer at the time of his arrest, initial detention and initial interrogation. The complainant further submits that, immediately after his arrest, the head of the Regional Police Department in Tolyatti subjected him to a beating and threatened him with further beatings if he did not provide a confession with content as requested by the investigator. He submits that he was subjected to further beatings during his detention in the temporary confinement ward and that he was denied medical assistance. He submits that he is only referring to the beating and the threats for information purposes, because he has no documentary evidence and because his complaints were not registered and processed. He also submits that the defence lawyer appointed ex officio did not take any measures to prevent him from being tortured, and "hid the facts". The complainant reiterates that he was kept in the temporary confinement ward in order to break him physically and morally and to prevent him from preparing his defence.

State party's further observations

8.1 On 28 March 2013, the State party reiterated the circumstances relating to the conviction against the complainant. It submits that an analysis of the complainant's submissions to the Committee shows that he is trying to achieve a review of the verdict against him and is therefore abusing his right to submission. The State party maintains that the complainant's allegations that he was denied a defence attorney and was subjected to beatings by law enforcement officials do not correspond to reality. According to the case file, on 12 December 2000, the complainant made a confession to the police; he was questioned as a witness and it was explained to him that, in accordance with article 51 of the Constitution of the Russian Federation, he was not obliged to testify against himself. He was arrested on 13 December 2000 at 10 p.m. and again his rights under article 51 of the Constitution were explained to him, which is evidenced by his signature. He stated in the protocol that he did not require the assistance of a lawyer. On 15 December 2000, as the result of a ruling by the investigator responsible, the complainant was detained on remand and was declared to be an accused. His rights were explained to him, including his right to defence, in the presence of a lawyer, all of which is confirmed by his signature on the protocol. Furthermore, the complainant stated in writing that the police and the Prosecutor's Office did not "apply any pressure" on him. He did not object to his interests being represented by the said lawyer. His guilt was proved by the entirety of the evidence, and when determining his sentence, the court took into account information regarding the personality of the accused. All arguments put forward by the complainant at the court of second instance were examined by the court and declared to be unsubstantiated. In particular, his confession was recognized to be "authentic" and in accordance with the rest of the evidence.

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[1] The complainant refers in particular to Constitutional Court ruling No. 11-P, dated 27 June 2000.

8.2 The State party further reiterates that the complainant has won a civil law suit, but that he failed to raise in court the allegations that his complaints to the management of the temporary confinement centre were not reviewed and that he was denied medical assistance. The State party again reiterates that Samara Regional Court granted the complainant 10,000 roubles of compensation for moral damages and that the Prosecutor's Office repeatedly refused to initiate criminal investigations regarding his excessive detention in the temporary confinement ward. Therefore the complainant's submission does not contain any new information.

Complainant's further information

9. On 4 June 2013, the complainant submitted that, in its latest submission, the State party does not provide any new arguments, and states that he has no further comments.

Issues and proceedings before the Committee

Consideration of admissibility

10.1 Before considering any complaint submitted in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

10.2 The Committee takes note of the State party's submission that the communication should be declared inadmissible because in 2010 the complainant submitted an application to the European Court of Human Rights on the same matter, which was declared inadmissible. However, the Committee notes the complainant's explanations that the subject matter of his application to the European Court was different and that it was submitted more than six months after the entry into force of the last domestic court's judgement relating to the complainant's detention in the temporary confinement ward. The Committee observes that if the complainant's application to the European Court had concerned his detention in the temporary confinement ward, the European Court would have declared it inadmissible for failure to meet the six-month deadline established in article 35, paragraph 1, of the European Convention on Human Rights. The Committee also observes that, instead of declaring his application inadmissible under that article, the European Court rejected it with the statement that it contained no violation of the rights and freedoms enshrined in the European Convention or its protocols. The Committee therefore concludes that the European Court has not examined the same matter. In the circumstances, the Committee considers that it is not precluded, by the requirements of article 22, paragraph 5 (a), of the Convention, from examining the present communication.

10.3 The Committee takes note of the State party's submission that since the complainant had been awarded compensation by the civil court, he had lost his "victim" status and therefore his communication to the Committee was inadmissible. The Committee observes that the complainant's allegations raise issues under the Convention and that the issue of whether he was awarded fair and adequate compensation relates to the merits of his allegations under article 14 of the Convention. The Committee further recalls that any State party that has made the declaration provided for under article 22 of the Convention has recognized the competence of the Committee to receive and consider complaints from individuals who claim to be victims of violations of one or other of the provisions of the Convention. In the circumstances, the Committee considers that it is not precluded by the requirements of article 22 of the Convention from examining the question of whether or not the complainant is a victim of violations of the Convention on the merits.

10.4 The Committee also takes note of the State party's argument that the communication should be declared inadmissible on the grounds that it was submitted in abuse of the right of submission, because the complainant appeared to be seeking a review of his verdict and sentence. The Committee observes that, under article 15 of the Convention, the State party has accepted the obligation of ensuring that any statement that is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, and therefore the submission by the complainant relates to the merits of his allegations under article 15 of the Convention. In the circumstances, the Committee considers that it is not precluded, by the requirements of article 22, paragraph 2, of the Convention, from examining the present communication.

10.5 The Committee takes note of the complainant's allegation that the State party violated its obligations under article 4 of the Convention. However, the Committee is of the opinion that the author has failed to substantiate such a claim for the purposes of admissibility.

10.6 The Committee further takes note of the complainant's allegations that he was not provided with a lawyer at the time of his arrest, initial detention and initial interrogation, that immediately after his arrest and while in the temporary confinement ward he was subjected to beatings, and that he was denied medical assistance. The Committee observes, however, that the above-mentioned allegations do not appear to have been raised before the domestic authorities, and therefore declares them inadmissible under article 22, paragraph 5 (b), of the Convention.

10.7 The Committee considers that the complainant's remaining allegations raise issues under articles 1, 12, 13, 14 and 15 of the Convention, and accordingly declares them admissible and proceeds to their examination on the merits. The Committee also notes that the facts in the communication could raise issues under article 16 of the Convention.

Consideration of the merits

11.1 The Committee has considered the communication in the light of all the information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention.

11.2 The Committee notes the claim that the complainant was subjected to torture, as defined by article 1 of the Convention. It notes that some of the facts relating to the complainant's prolonged detention in the temporary confinement ward are not disputed by the State party, namely that the complainant was held in the temporary confinement ward from 14 December 2000 to 2 April 2001 and again from 25 June 2001 to 24 July 2001, that he was not provided with bedding or toiletry items, that there was no table, toilet or sink in the cell, that showers were seldom allowed and then only with cold water, and that no walks outside the cell were allowed. The Committee also notes that the State party has disputed other allegations made by the complainant, namely that there were insects in the cell, that the light was always on, that there was no ventilation and that he was only fed once a day. The Committee observes that the conditions in which the complainant was detained for a prolonged period of time do not appear to have caused "severe pain and suffering" within the meaning of article 1, paragraph 1, of the Convention. However, the Committee considers that, even without taking the disputed facts into consideration, the conditions of detention in the temporary confinement ward amounted to cruel, inhuman or degrading treatment within the meaning of article 16 of the Convention.

11.3 With regard to the alleged violations of articles 12 and 13, the Committee recalls its jurisprudence[2] that a criminal investigation must seek both to determine the nature and circumstances of the alleged acts and to establish the identity of any person who may have been involved therein. The Committee observes that the authorities of the State party conducted an investigation into the complainant's allegations, which confirmed some of his allegations regarding the duration and conditions of his detention in the temporary confinement ward and established who the officials were who were responsible for his placement there. Accordingly, the Committee finds that the State party did not violate the complainant's rights under articles 12 and 13 of the Convention.

11.4 With regard to the alleged violations of articles 14 and 15 of the Convention, the Committee notes that the scope of application of the said provisions only refers to torture in the sense of article 1 of the Convention and does not cover other forms of ill-treatment. Moreover, article 16, paragraph 1, of the Convention, though specifically referring to articles 10, 11, 12 and 13, does not mention articles 14 and 15 of the Convention. Nevertheless, the State party is obliged to grant redress and fair and adequate compensation to the victim of an act carried out in breach of article 16 of the Convention. The positive obligations that flow from the first sentence of article 16 of the Convention include an obligation to grant redress and compensate the victims of an act carried out in breach of that provision.[3] The Committee observes that although the complainant was granted compensation, in order to obtain it he had to file a civil law suit and to prove his allegation in a civil court, despite the findings of an investigation by the Prosecutor's Office. The Committee further observes that the findings of the civil court resulted in the complainant being awarded a symbolic amount of monetary compensation and that the civil court had no jurisdiction to impose any measures on the individuals responsible for the cruel, inhuman or degrading treatment. The Committee is therefore of the view that the State party has failed to observe its obligations under article 16 of the Convention by failing to provide the complainant with redress and with fair and adequate compensation.[4]

12. The Committee, acting under article 22, paragraph 7, of the Convention, is of the view that the facts before it disclose violations of article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

13. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee invites the State party to take steps to provide the complainant with redress, including fair and adequate compensation. The State party is also under an obligation to prevent similar violations in the future. The Committee invites the State party to inform it, within 90 days of the date of the transmittal of this decision, of the steps that it has taken in response to the present decision.

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[2] See communication No. 59/1996, *Encarnación Blanco Abad v. Spain*, Views adopted on 14 May 1998, para. 8.8.

[3] See communication No. 161/2000, *Dzemajl et al. v. Yugoslavia*, decision adopted on 21 November 2002, para. 9.6.

[4] See also communication No. 261/2005, *Osmani v. Serbia*, decision adopted on 8 May 2009, para. 10.8.

Communication No. 481/2011: *K.N., F.W. and S.N. v. Switzerland*

Submitted by:	K.N., F.W. and S.N. (represented by Florian Wick)
Alleged victims:	The complainants and the two minor children of K.N. and F.W.
State party:	Switzerland
Date of complaint:	29 September 2011 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 19 May 2014,

Having concluded its consideration of communication No. 481/2011, submitted to the Committee against Torture by Florian Wick on behalf of K.N. et al. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainants, their counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainants are K.N., born in 1960; his wife, F.W., born in 1966; and their adult son, S.N., born in 1990. K.N. and F.W. also present the complaint on behalf of their two minor children, born in 1996 and 2002. The complainants and the minor children are nationals of the Islamic Republic of Iran and reside in Switzerland. They claim that their deportation to the Islamic Republic of Iran would constitute a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainants are represented by counsel, Florian Wick.

1.2 On 28 October 2011, in application of rule 114, paragraph 1, of its rules of procedure, the Committee asked the State party not to expel K.N., F.W. and their children to the Islamic Republic of Iran while the complaint was being considered.

The facts as submitted by the complainants

2.1 K.N. was an active member of the illegal Communist opposition party Komala.[1] He collected funds and recruited new members for Komala. By 1982, K.N. had already been arrested and spent five years in prison. In August 2008, he travelled to Iraq, where he met with two members of Komala. The Iranian Secret Service attempted to arrest him upon his return to the Islamic Republic of Iran on 29 August 2008. Thereafter, Secret Service agents visited the complainants at their home on three occasions, when K.N. was absent. The agents beat F.W. on each of these occasions. S.N. was helping his father by taking care of all computer-related tasks for Komala. Because the Secret Service had seized the family computer on 29 August 2008, the complainants maintain that S.N.'s involvement in his father's work put him at risk of harm.

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[1] The complainants provide a copy of Komala's website (www.komalah.org/english/index.htm), which states that the purpose of Komala is to establish a new kind of Marxist society based on freedom, equality and social justice.

2.2 K.N. and S.N. participated in a demonstration against the Iranian president in April 2009; they were filmed and photographed at the event, and their pictures were broadcast in the Islamic Republic of Iran on television in a Farsi-language programme. Reports and photographs of K.N. and S.N. were also published on websites, including that of the International Federation of Iranian Refugees (IFIR).[2] F.W. participated in an event promoting women's rights in the Islamic Republic of Iran. After the presidential elections in the Islamic Republic of Iran, K.N. and S.N. participated in demonstrations, including one on 25 June 2009. Images from that demonstration were posted on the Internet.[3] Fearing reprisals and persecution due to S.N.'s and K.N.'s involvement in Komala, the family left the Islamic Republic of Iran.

The complaint

3.1 The complainants assert that Switzerland would be violating their rights under article 3 of the Convention by forcibly deporting them to the Islamic Republic of Iran, where their lives and security would be threatened, primarily on account of K.N.'s political activities against the Iranian regime. The complainants state that "they incur the highest risk to be tortured in the Islamic Republic of Iran, in a prison or outside, and that they even risk the death penalty." The complainants also assert that F.W. is in a critical state of health and would therefore be disproportionately affected by any adverse action by the Iranian authorities.

3.2 The complainants maintain that political opponents in the Islamic Republic of Iran are frequently and increasingly sanctioned or tortured, and that the Iranian authorities consistently disregard human rights[4] and have repeatedly tortured or executed members of the Komala party.[5] They assert that K.N. is likely a person of interest to the Iranian authorities because a far-reaching internet surveillance system is in place in the Islamic Republic of Iran.[6]

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[2] The complainants refer to www.ifir.ch (site not available), www.hambastegi.org, and www.rowzane.com. They provide copies of several photographs published on the IFIR website purporting to depict K.N., F.W. and S.N. participating in IFIR demonstrations against Islamic rule. Other photographs published on the IFIR site purport to depict K.N. and F.W. attending an IFIR meeting, and K.N. and S.N. participating in a demonstration on behalf of Neda Agha-Soltan. The complainants also provide copies of similar photographs published on the website www.pishgam.ch (site not available) and purporting to depict K.N. and S.N. participating in demonstrations against the Iranian regime. They also provide photographs published on ex-muslime.blogspot.com and wegalerie.blogspot.com, purporting to depict K.N. participating in a demonstration against Iranian membership of the International Labour Organization, and photographs from an unidentified source, dated 11 February 2010, purporting to depict K.N. participating in a demonstration against the Islamic Republic of Iran.

[3] The complainants cite www.youtube.com.

[4] The complainants cite an article by the Democratic Party of Iranian Kurdistan, "Hundreds Kurds for political and security reason are detained — A brief report on the situation of human rights under Islamic Republic of Iran's regime — July 2005–July 2006", available from: www.kurdistanarojava.com/inglizi/Nuce2006_Inglizi/IranianKurdistan.htm (site not available); Human Rights Watch, "You Can Detain Anyone for Anything': Iran's Broadening Clampdown on Independent Activism" (January 2008); Human Rights Watch, "Iran: Halt the Crackdown" (19 June 2009); Christian Science Monitor, "Iran's mass arrests: broadest since 1979 Islamic Revolution," (28 June 2009); CNN.com, "Wife fears for safety of detained Iranian activist" (undated); United Nations Secretary-General's report on the situation of human rights in the Islamic Republic of Iran (A/65/370, p. 3); General Assembly resolution 65/226.

3.3 The complainants argue that they have exhausted all domestic remedies. They filed Swiss asylum applications on 11 October 2008, which were denied by the Federal Office for Migration on 30 October 2008.[7] The Federal Administrative Court denied the complainants' appeals of the asylum decisions on 5 December 2008. The complainants state that the Federal Office and the Court found their claims to be implausible. The Court also considered that certain documents submitted by the complainants (namely, two letters from the Representation of Komala abroad) did not establish a risk of persecution, because membership of Komala alone was insufficient to establish such a risk. The complainants assert that they had submitted these documents to the Federal Office and that the Federal Office failed to take them into account. The complainants filed a petition for reconsideration before the Federal Office on 5 February 2009. The Federal Office forwarded the request to the Court, in the form of a request for revision. The complainants submitted additional documentation in support of their claims (namely, a summons issued by the Islamic Revolution Court for K.N. and S.N). The Court rejected the request for revision on 28 May 2009, and the request for reconsideration before the Federal Office was cancelled on 7 August 2009 because the complainants filed a second asylum application. They submitted supplementary documents with the second application; however, the Federal Office rejected the application on 30 November 2010. The Federal Office called into question K.N.'s membership in Komala, and considered it unlikely that the Iranian authorities were aware of their alleged membership in Komala or IFIR. The Federal Office further considered that the online photographs purporting to depict the complainants' participation in the 2009 demonstration against the Iranian president had been manipulated and did not in any case permit identification of the complainants. On 27 December 2010, the complainants appealed the second set of Federal Office decisions to the Court. On 1 September 2011, their claim was rejected by the Court, which considered that the complainants could not be considered visible opponents to the Iranian regime and could not demonstrate deep political conviction. The Court also considered that the pictures and videos published on the internet were unlikely to permit identification of the complainants, that K.N.'s designation as successor to the community leader of the IFIR did not constitute a relevant risk of persecution, and that there was no general threat of violence in the Islamic Republic of Iran. The complainants assert that the Court decisions cannot be appealed. In a letter dated 8 September 2011, the Federal Office set a deadline for the complainants to leave Switzerland before 30 September 2011.

3.4 The complainants refute the credibility and substantiation determinations made by the Federal Office for Migration and the Federal Administrative Court. They maintain that they provided documentation confirming K.N.'s active membership in IFIR and the Komala party, and his political activities in exile, as well as evidence of widespread torture of Komala party members and extensive surveillance of internet dissidence by the Iranian authorities. Specifically, the complainants maintain that they provided with their second asylum application a statement dated 20 January 2009 from Salah Mazoji, a central committee member of the Komala party who had met K.N. personally.[8] Mr. Mazoji states the following: that K.N. was in prison from 20 March 1982 to 25 February 1987; that after his release from prison, K.N. was forbidden from going to university and working, that he was denied all government benefits, and was controlled and observed all the time by security forces; that K.N. has been an active member of Komala since joining the party in 1989; that on 18 August 2008, Mr. Mazoji asked K.N. to join him in Suleimanye in Iraq in order to plan future Komala activities in the Islamic Republic of Iran, and that K.N. subsequently did so. The complainants further report that K.N. was wanted upon return to the Islamic Republic of Iran by the security forces, who wanted to arrest him and S.N.; that K.N. and his son went into hiding for that reason and had to leave the Islamic Republic of Iran with their entire family because their safety was at risk; and that K.N. and his son risked being executed by the Iranian regime because of K.N.'s activities with Komala. The complainants also state that after K.N.'s release from prison, he was given an identification document with which he had to report to the authorities twice a month and was also required to pledge a parcel of real property as security to the Iranian authorities. The complainants argue that these measures indicate that K.N. was under the scrutiny of the Iranian authorities even from the time of his arrest, and that the Federal Office for Migration and the Federal Administrative Court failed to take these facts into account and to understand the pervasive extent of Iranian surveillance mechanisms. The complainants maintain that the Federal Office and the Court erroneously disregarded or discounted the statements provided by Mr. Mazoji, Mr. Azizpour and IFIR. The complainants state that the head of IFIR provided an affidavit stating that he believed K.N. could successfully promote the needs of the Iranian refugee community in Switzerland, and that K.N. should succeed him as the leader of IFIR. The complainants also contest the Court's determination that the summons they provided (issued by the Islamic Revolution Court and addressed to K.N. and S.N. (attachment 10, thereto attachments 17 and 18; attachment 12) was a forgery. The complainants further argue that the Court should have taken into account credible reports documenting human rights abuses in the Islamic Republic of Iran: even though those reports did not relate to a personal risk incurred by K.N., the complainants consider that they should have weighed in their favour.[9]

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[5] The complainants cite Human Rights Watch, "Iran: Violent Crackdown on Protesters Widens" (23 June 2009).

[6] The complainants cite Organisation suisse d'aide aux réfugiés, "Iran: depart illégal/situation des membres du PDKI/activités politiques en exil" (16 November 2010).

[7] S.N. filed an asylum application separate from those of the four other family members.

[8] The complainants provide a copy of Mr. Mazoji's English-language statement with their complaint.

3.5 In a further submission, dated 28 November 2011, the complainants provided additional documentation in order to demonstrate the "imminent risk of torture" they claim to face if deported to the Islamic Republic of Iran. They provide an undated signed statement from Mohammed Amin Pari, Jafar Ghaderi and Loghman Ekthiari,[10] who allege that they were detained by the Iranian military police for 48 hours, beginning on 17 August 2011, on account of their contact with K.N. They state that after long and painful torture and disrespectful accusations by the police, they were forced to sign a statement providing that the military police can interrogate them in the future at any time. The complainants also provide a signed letter dated 19 November 2011 from Meharngiz Khagaz-Kanini, stating that he had sought asylum in Switzerland and met K.N. there. Mr. Khagaz-Kanini further states that upon his return to the Islamic Republic of Iran in August 2011, he was interrogated several times by the military police and that, out of fear, he disclosed the names of K.N. and his family and spoke of their political activities in the Communist party of the Islamic Republic of Iran and in IFIR.

State party's observations on the merits

4.1 On 27 April 2012, the State party submitted its observations on the merits of the communication. The State party considers that the Federal Office for Migration and Federal

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[9] The complainants cite European Court of Human Rights decision *R.C. v. Sweden*, Application no. 41827/07, 9 March 2010.

[10] The complaint and statements do not specify how these persons are acquainted with the complainants.

Administrative Court decisions were well founded, and that the deportation of the complainants and the minor children to the Islamic Republic of Iran would not constitute a violation of the Convention by Switzerland.

4.2 The State party considers that, according to article 3 of the Convention, State parties are prohibited from expelling, returning or extraditing a person to another State where there exist substantial grounds for believing that he or she would be subjected to torture. To determine the existence of such grounds, the competent authorities must take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.[11] Such a pattern is not in itself a sufficient basis for concluding that an individual might be subjected to torture upon his or her return to his or her country. To benefit from the protection under article 3, an applicant should show that he or she runs a "foreseeable, real and personal" risk of torture.

4.3 The State party considers that, although human rights conditions in the Islamic Republic of Iran are a cause for concern in several respects, the country is not affected by generalized violence, and that the complainants have not demonstrated that they incur a foreseeable, personal and real risk of being subjected to torture upon return there. The State party notes that the complainants do not allege that they have been subjected to torture or ill-treatment in the past. The State party considers that F.W. and the minor children do not claim separate grounds for asylum, and that F.W. has stated that she was never politically active and had never encountered problems with the Iranian authorities. The State party takes the view that K.N.'s allegations regarding the activities he performed for the Komala party in the Islamic Republic of Iran are not credible. The State party considers that K.N. was unable to adequately or correctly respond to detailed questions about the Komala party and its membership procedures, that he did not possess a Komala membership card, and that he inconsistently claimed during a hearing that he was both a member and not a member of Komala. The State party further considers that K.N. was unable to consistently and adequately describe the nature of the fundraising activities he performed for Komala, and could not convincingly explain why the Secret Service did not seek him at his workplace after finding that he was not at home. The State party also considers that the complainants have not established any link between K.N.'s alleged arrest in 1982 and his departure from the Islamic Republic of Iran in 2008. The State party further submits that, in the light of the Swiss authorities' findings that the complainants were not being pursued by the Iranian authorities before their departure from the country, K.N. appears to have lived in the Islamic Republic of Iran from 1987 to 2008 without encountering any difficulties with the Iranian regime. Regarding the documentary evidence proffered by the complainants, the State party takes the view that the statements by Mr. Azizpour appear to be "writings of convenience", and that the summons is not probative evidence of a risk incurred, since K.N. brought many copies of blank summons forms with him to Switzerland and stated at his hearing before the Federal Office for Migration that anything could be purchased in the Islamic Republic of Iran.

4.4 The State party submits that S.N.'s allegations relating to the computer-related activities he performed in the Islamic Republic of Iran to assist his father's involvement in Komala are contradictory and unconvincing because he was unable, during asylum proceedings, to identify or describe any of the passwords, telephone numbers, e-mails or political texts that he alleged that he had recorded on the computer for his father, and because it was not credible that he would save passwords on a computer when passwords were intended not to be recorded. The State party takes note of S.N.'s explanation at his Federal Office hearing that he did not have a personal interest in these activities but was simply executing them at his father's request. The State party further considers that S.N. is not at risk of ill-treatment in the Islamic Republic of Iran since he stated that he was not politically active in the country, was unable to provide any useful information about Komala or relevant details about the visit of the Secret Service to the family's home, and that he did not know why his father claimed that he was aware of all of his father's Komala activities and contacts.

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[11] The State party refers to the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22 (*Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44 and Corr.1), annex IX), paras. 6 and 8, and the Committee's jurisprudence in communications No. 94/1997, *K.N. v. Switzerland*, Views adopted on 19 May 1998, paras. 10.2 and 10.5, and No. 100/1997, *J.U.A. v. Switzerland*, Views adopted on 10 November 1998, paras. 6.3 and 6.5.

4.5 The State party considers that, although the Iranian Secret Service has been known to conduct surveillance of expatriate dissidents, it is implausible that the Service has taken note of the complainants' activities in Switzerland. The State party is of the view that the Iranian authorities do not target all members of opposition parties, but rather focus on high-profile individuals who, for example, participate in activities that could represent a concrete danger to the Iranian regime. The State party submits that K.N. and S.N. do not present such a profile; the political activities they allege that they have participated in are typical activities for exiled Iranians, and would not identify the complainants as potentially dangerous agitators even if the Iranian authorities came to know of them. The State party considers that the Iranian authorities are unlikely to attempt to apply facial recognition techniques to the unlabelled photographs purporting to depict the complainants participating in demonstrations, and that it is impossible for the authorities to monitor and identify all political opponents abroad. The State party further considers that the authorities are likely aware that many Iranians living abroad attempt to portray themselves as dissidents in order to obtain asylum. The State party also considers that the complainants did not allege that they had participated in political activities against the Islamic Republic of Iran in Switzerland until the Federal Administrative Court denied their request for review, and that this sudden and recent political engagement is superficial and does not appear to stem from profound conviction.[12]

Complainants' comments on the State party's submission

5.1 By letter dated 5 July 2012, the complainants submitted their comments on the observations of the State party. As a preliminary matter, they maintain that the State party has not provided any new information or any response to the materials provided by the complainants to the Committee.

5.2 The complainants contest the State party's observation that there is no situation of generalized violence in the Islamic Republic of Iran, since there is a high risk of being subjected to torture by the Iranian authorities. They further maintain that the State party has attempted to undermine the complainants' credibility by making superficial and speculative observations regarding the way in which the Iranian Secret Service typically operates, and regarding what a person in K.N.'s circumstances should and should not know about Komala. The complainants submit that K.N. was able to cite 19 members of the central committee of Komala during asylum proceedings, and that his testimony regarding his activities for Komala was not contradictory. The complainants assert that the State party's observations on S.N.'s allegations are similarly speculative and unpersuasive. The complainants maintain that there is nothing implausible about S.N.'s failure to remember

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[12] The State party also submits that the complainants should be able to easily reintegrate into Iranian society, since they have a large network of relatives and friends in Mahabad, where they lived until their departure, and since K.N. is well educated.

Komala-related passwords, or about his lack of knowledge of his father's political activities or the circumstances in which the Secret Service searched the family house. The complainants argue that the State party fails to consider the complainants' case in depth and does not attempt to counter their arguments.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee against Torture must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement.

6.2 The Committee recalls that, in accordance with article 22, paragraph 5 (b), of the Convention, it shall not consider any communications from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that in the instant case the State party concedes that the complainants have exhausted all available domestic remedies and does not contest the admissibility of the complaint.

6.3 The Committee considers that the complaint raises substantive issues under article 3 of the Convention, and that these issues should be examined on the merits. As the Committee finds no obstacles to admissibility, it declares the communication admissible.

Consideration of the merits

7.1 In accordance with article 22, paragraph 4, of the Convention, the Committee has considered the present communication in the light of all information made available to it by the parties concerned.

7.2 The issue before the Committee is whether the removal of the complainants to the Islamic Republic of Iran would violate the State party's obligation under article 3 of the Convention not to expel or to return (*refouler*) a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee must evaluate whether there are substantial grounds for believing that the complainants would be personally in danger of being subjected to torture upon return to the Islamic Republic of Iran. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk.[13]

7.3 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention, in which it states that "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion". While the risk does not have to meet the test of being "highly probable" (para. 6), it must be personal and present. In this regard, the Committee has determined that the risk of torture must be foreseeable, real and personal.[14] The Committee recalls that, under the terms of its general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned, while at the same time it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.[15]

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[13] Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

7.4 The Committee takes note of the State party's observations concerning the complainants' lack of credibility. These concerns are based on allegations including the presentation of contradictory and incomplete information concerning K.N.'s and S.N.'s activities for Komala; the questionable authenticity or veracity of certain of the documents provided by the complainants to substantiate K.N.'s involvement in Komala (namely, the summons and the corroborating statements provided by Mr. Azizpour); and the convenient timing of their political activities in Switzerland. The Committee also notes the State party's position that K.N.'s activities within the Komala party are superficial in nature and would not be noticed by or be of interest to the Iranian authorities.

7.5 The Committee takes note of the complainants' assertions regarding the attempts by the Government of the Islamic Republic of Iran to identify political dissidents living abroad. The Committee notes that the State party, while expressing disagreement regarding the extent of this surveillance, observes that active expatriate dissidents risk persecution upon their return to the Islamic Republic of Iran. The Committee is seriously concerned by findings that the Iranian authorities engage in extensive attempts to identify and sanction political dissidents, including ethnic Kurds and alleged members of the Komala party.[16]

7.6 The Committee regrets that the State party did not provide observations on the documentation[17] recently submitted by the complainants to establish that they are still being sought by the Iranian authorities, who have recently tortured three of their friends on account of their association with K.N., and that a person known to K.N. denounced him to the Iranian police. The Committee is concerned at the many reports of human rights violations, including the use of torture, in the Islamic Republic of Iran.[18] The Committee does not have information indicating that this situation has significantly improved following the change in leadership when Iranian President Mahmoud Ahmedinejad left office in 2013. Indeed, the Committee notes that the human rights situation in the Islamic Republic of Iran remains extremely alarming, with ongoing reports of incidents of detention and torture of political opponents.[19] The Committee considers that this is all the more worrying in light of the fact that the Islamic Republic of Iran frequently administers the death penalty and applies it without due process and in cases involving certain crimes not meeting international standards for the "most serious" offences.[20]

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[14] See, inter alia, communications No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November 2005, and No. 226/2003, *T.A. v. Sweden*, decision adopted on 6 May 2005.

[15] See general comment No. 1, para. 9; communication No. 375/2009, *T.D. v. Switzerland*, decision adopted on 26 May 2011, para. 7.7.

[16] See, e.g., Note by the Secretary-General on the situation of human rights in the Islamic Republic of Iran (A/68/503), paras. 1, 6, 8 and 30; Note by the Secretary-General on the situation of human rights in the Islamic Republic of Iran (A/67/369), paras. 15–18; Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran (A/HRC/19/66), pp. 23–29.

[17] The new documentation is referred to in para. 3.5.

[18] See *Hamid Reza Eftekhary v. Norway*, communication No. 312/2007, decision adopted on 11 January 2012, paras. 7.4–7.6.

[19] See Human Rights Council, report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran (A/HRC/25/61), paras. 2, 4, 27–32 and 52–57; Human Rights Council, Note by the Secretary-General on the situation of human rights in the Islamic Republic of Iran (A/HRC/25/26), paras. 7, 17–20 and 43.

7.7 In assessing the risk of torture in the present case, the Committee notes the complainants' claims that K.N. was sought at his home three times by the Iranian authorities on account of his activities with the Komala opposition party and that F.W. was beaten on each of these occasions; that S.N. performed computer-related tasks for the Komala party at K.N.'s request; and that numerous photographs of K.N., S.N., and F.W. participating in political demonstrations against the Iranian regime have been published on the Internet. The Committee further notes the complainants' submissions indicating that three of their friends have been subjected to torture and interrogation by the Iranian authorities on account of their contact with K.N., and that another friend denounced K.N. to the Iranian police as a dissident activist. The Committee considers that all of these factors indicate a real and personal risk of torture should the complainants be returned to the Islamic Republic of Iran. The Committee further considers unpersuasive several of the reasons for which the State party's authorities question the credibility of the author on the basis of the lack of clarity of his presentation of the facts and on his limited knowledge of the Komala party. The Committee considers that such lack of detail as may exist in the author's presentation of the facts is not material and does not raise doubts about the general veracity of the author's claims.[21] The Committee also notes the State party's observation that the Iranian authorities monitor only dissidents with prominent profiles, but observes that recent reports indicate that low-level opposition is also closely monitored in the Islamic Republic of Iran.[22]

7.8 The Committee therefore considers that there are substantial grounds for believing that the complainants would be subjected to torture if returned to the Islamic Republic of Iran. Moreover, the Committee notes that, since the Islamic Republic of Iran is not a party to the Convention, the complainant would be deprived of the legal option of recourse to the Committee for protection of any kind.

8. In the light of the above, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the deportation of the complainants to the Islamic Republic of Iran would constitute a violation of article 3 of the Convention.

9. The Committee urges the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the decision expressed above.

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[20] See A/HRC/25/61, paras. 5 and 84.

[21] Communication No. 41/1996, *Kisoki v. Sweden*, Views adopted on 8 May 1996, para. 9.3.

[22] Ibid., paras. 88–90; A/68/503, paras. 6–15.

Communications Nos. 483/2011 and 485/2011: *X and Z v. Finland*

Submitted by:	Mr. X and Mr. Z, both represented by Marjaana Laine of the Refugee Advice Centre
Alleged victim:	The complainants
State party:	Finland
Date of complaint:	14 November 2011 (initial submissions)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 12 May 2014,

Having concluded its consideration of complaints No. 483/2011 and No. 485/2011, submitted to the Committee against Torture by Mr. X and Mr. Z under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainants and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The authors of the complaints dated 14 November 2011 and 16 November 2011 are siblings – Mr. X and Mr. Z, both Iranian nationals of Kurdish origin born in 1983 and 1984, respectively. Their asylum applications in Finland have been rejected and they risk deportation to the Islamic Republic of Iran. They claim that their deportation to the Islamic Republic of Iran would constitute a breach by Finland of article 3 of the Convention against Torture. The complainants are both represented by counsel, Marjaana Laine.

1.2 On 15 November 2011, the State party was requested, under rule 114, paragraph 1, (former rule 108, paragraph 1) of the Committee's rules of procedure (CAT/C/3/Rev.5), not to expel the complainants while their complaint was under consideration by the Committee. On 12 January 2012, the State party informed the Committee that it had taken the necessary steps to comply with the Committee's request for interim protection measures.

1.3 On 12 May 2014, pursuant to rule 111, paragraph 4, of its updated rules of procedure (CAT/C/3/Rev.6), the Committee decided to consider the present two communications jointly.

The facts as presented by the complainants

2.1 The complainants are brothers and are both Iranian nationals from Mahabad, belonging to the Kurdish minority. They both claim to have been politically active in the Islamic Republic of Iran, Iraq and Finland. They come from a politically active and high-profile family; their father and uncles have been members of the Komala party and have been persecuted because of their political opinions and activities. One uncle has been a *peshmerga* (armed Kurdish fighter) and another uncle has been a member of the Central Committee of the Komala party. Their father and one of their uncles are now Finnish citizens and have received residence permits in Finland because they needed international protection.

2.2 The complainants submit that, in 1999, when they were adolescents, they had to flee from the Islamic Republic of Iran with their family. The family sought asylum in Turkey. In 2003, their father travelled to Finland and received protection status there. The authors of both complaints and the rest of their family were returned to the Islamic Republic of Iran in 2004. Upon return, they were questioned by the Iranian authorities about the father's whereabouts and about their asylum application in Turkey. They were imprisoned for one month and had to pay fines because they had left the Islamic Republic of Iran illegally without obtaining prior authorization from the authorities.

2.3 The complainants claim that after their release they started their political activities in the Islamic Republic of Iran, also joining the illegal Komala party. Their tasks within the party consisted of distributing the party's leaflets and other materials.

2.4 On 23 June 2007, the complainants were arrested by the Ettela'at intelligence forces in the city of Mahabad. They were blindfolded and taken to a detention centre. They were kept there for about two months and were continuously interrogated about their father's and their relatives' political activities. The complainants were forced to confess that they belonged to the Komala party, provide information about the party's activities and reveal the names of other members. Between interrogations, they were both kept in solitary confinement for prolonged periods.

Alleged mistreatment of Mr. X

2.5 During his detention, Mr. X was constantly subjected to torture and was physically and verbally abused. His clothes were removed and he had cold water thrown on him. He was also burned with a hot implement to the point that he lost consciousness. The complainant was also suspended both from his hands and legs. The officers mistreated and tortured him, especially on the left part of his body, saying that, as he was a communist, he had to lose the left side of his body.

Alleged mistreatment of Mr. Z

2.6 During his detention, Mr. Z was beaten extensively on his head. He was also threatened with rape and death. At one point, he was tied to a stick, his legs were raised higher than the rest of his body, and he had water poured into his nose. The fingers of his left hand were injured and he was taken to hospital for surgery before being returned to the detention centre.

2.7 Both complainants further submit that, during their detention, they appeared three times before a court.[1] They were both charged and prosecuted for their membership and activities in the Komala party, for being communists and opponents of Islam, and for being so-called *mohareb* (enemies of God). After their third court appearance, they were taken to Mahabad prison, where they were detained for about a week. Thereafter they were released on bail, after their uncle had paid the equivalent of €45,000, until the next court hearing. After their release they fled to Iraq, where they stayed in a Komala *peshmerga* camp for one year and 16 days.

2.8 The complainants arrived in Finland on 4 October 2008 and applied for asylum the next day.[2] They submitted their original identity cards to the Immigration Service in order to prove their identities and provided a statement from the Komala representation abroad in support of their claim to have taken part in political activities. A medical certificate dated 8 December 2008 was also submitted by the complainants to the Immigration Service.[3]

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[1] It is not clear from the submissions to which court the complainants are referring.

[2] It is not clear from the submission how the complainants ended up in Finland.

2.9 On 5 May 2010, the Finnish Immigration Service rejected both asylum applications on the grounds that the accounts of the facts provided by the complainants were not credible and that the complainants had failed to produce any evidence in support of their allegations. The Immigration Service stated that the complainants had not provided any evidence to support their stories about their activities in the Komala party. On 2 July 2010, both complainants appealed to Helsinki Administrative Court.

2.10 In July 2010, Mr. X learned, via the Internet, that his friend and liaison person in the Komala party in the Islamic Republic of Iran, O.N., had been executed in the Islamic Republic of Iran the same month.[4] Afraid, the complainants decided to flee from Finland, where their asylum applications had been rejected. They applied for asylum in Denmark. However, after having received information on the European Union Dublin Regulation procedure,[5] they both returned voluntarily to Finland in November 2010.

2.11 Mr. X also submits that, on 4 February 2011 and 19 October 2011, two psychiatrists examined him and concluded that he continued to suffer from post-traumatic stress disorder and had symptoms consistent with severe depression. On 31 October 2011, a physiotherapist found that he suffered from pains in the right side of his groin and his left foot. According to the physiotherapist's statement, the pains could be attributable to the torture methods described by the complainant. Mr. Z submitted a statement from a general practitioner which indicates that, "overall, while the injuries seen now are very slight … there is no reason to doubt that they could have been caused during a period of incarceration between April and May 2007, and torture suffered during the same period".

2.12 Both complainants have continued their political activities while in Finland. They have regularly attended demonstrations against the regime in the Islamic Republic of Iran, repeatedly demonstrating in front of the Iranian Embassy in Helsinki, including on 20 June 2011. They have carried banners, actively organized demonstrations and disseminated information about the Komala party's activities. Those clarifications were made available, on appeal, to Helsinki Administrative Court.

2.13 On 17 May 2011, Helsinki Administrative Court held an oral hearing and considered the complainants' case. Their appeal was rejected by three votes to one on 23 June 2011. On 8 July 2011, the complainants applied to the Supreme Administrative Court for leave to appeal, with a request for interim protection measures. On 15 July 2011, the Supreme Administrative Court adopted a separate decision and suspended their deportation. However, the Supreme Administrative Court rejected their leave to appeal in a final decision of 26 October 2011. The complainants contend that all available domestic remedies have thus been exhausted. In the meantime, their deportation orders have entered into effect and could be enforced at any time.

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[3] According to the medical report, Mr. X complained of pain in his left knee, particularly when it was bent. A scar was also discovered in the middle of the middle finger on his left hand and the author mentioned that, as a result, making a fist was painful. The doctor also noticed a large area of red skin at the base of Mr. X's big toe on his left foot and on his left knee, and stated that they were consistent with, for example, exposure to hot/icy water. According to the doctor, the author appeared to be in good mental health. Although the doctor concluded that the author's injuries were slight, he found no reason to doubt that they were the result of torture inflicted on the author in the way he described.

[4] Mr. X claims that he mentioned O. N.'s name during his asylum interview with the Finnish Immigration Service.

[5] Council Regulation (EC) 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

The complaint

3. The complainants claim that their deportation to the Islamic Republic of Iran, where they have been tortured in the past and where, in their opinion, there are substantial grounds to believe that they would be subjected to torture again, would constitute a violation by Finland of their rights under article 3 of the Convention. They consider their claims credible and submit that their allegations are supported by documentary evidence, including regarding their political involvement with the Komala party, and by recent reports on the current human rights situation in the Islamic Republic of Iran.[6]

State party's observations on the merits

4.1 On 15 May 2012, the State party submitted its observations on the merits of the case. It recalls the facts of the case and also provides excerpts from relevant domestic legislation. The Aliens Act of the State party provides for the protection of the applicant if there is a "real risk of being subjected to serious harm".[7] The law further defines "serious harm" as the death penalty or execution; torture or other inhuman or degrading treatment or punishment; and serious and individual threat as a result of indiscriminate violence in situations of international or internal armed conflicts.

4.2 The State party submits that protection from removal from the country is offered if the authorities are "convinced of the veracity of the application".[8] The authorities make such a finding by taking into account the applicant's statements as well as "real time information of the circumstances … obtained from various sources".[9]

4.3 The State party, after considering all the facts of the case, contends that its Immigration Service rejected the complainants' asylum applications as it found that the political activities of the complainants were described only superficially, without any supporting evidence. Similarly, regarding the accounts of torture, the judicial proceedings, the sentence and the complainants' release on bail, the complainants provided no evidence except their own account of events.

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[6] The complainants refer to communication No. 357/2008, *Jahani v. Switzerland*, decision adopted on 23 May 2011, and to *R.C. v. Sweden*, European Court of Human Rights judgment of 9 June 2010. They also refer to several international sources on the situation of human rights in the Islamic Republic of Iran, such as *Country Advice: Iran 2009* published by the Australian Government Refugee Review Tribunal on 19 August 2010, available from www.refworld.org/publisher,AUS_RRT,,IRN,4ec4d1d72,0.html; a report of the Iranian Intelligence Service; *B.A. (Demonstrators in Britain - risk on return) Iran v. Secretary of State for Home Department*, CG [2011] UKUT 36 (IAC), United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), 1 February 2011, available from www.refworld.org/docid/4d5a8c7d2.html; and United Kingdom: Home Office, "Operational guidance note – Iran", (IRAN OGN v6), 15 March 2011, available from www.refworld.org/docid/4d7f54a42.html. According to the reports, members and supporters of Kurdish opposition groups, such as Komala, are in real danger of being persecuted. Kurdish opposition groups suspected of separatist aspirations are brutally suppressed and individuals suspected of being members of those groups are arrested and imprisoned and some of them sentenced to death. Although the Iranian Constitution prohibits arbitrary arrest and detention, the prohibition is not respected. Suspected dissidents are frequently held in unofficial detention centres, and there are numerous credible reports alleging that members of the security forces and prison personnel torture detainees and prisoners.

[7] Aliens Act (301/2004, amendments up to 549/2010 included) sect. 88 (1).

[8] Ibid., sect. 98 (3).

[9] Ibid., sect. 98 (2).

4.4 The State party concedes that there are major issues with the human rights situation in the Islamic Republic of Iran. It contends that members of the Komala party, which is illegal in the Islamic Republic of Iran, can be subject to strict measures. It submits, however, that the complainants failed to provide evidence of their membership of Komala. They provided a certificate of membership from the party's representative in Sweden, but the certificate does not in itself enable conclusions to be drawn about the complainants' position and activities, or the level of potential threat if their membership became known to the authorities in the Islamic Republic of Iran. Even if the information provided by the complainants is considered to be true, they cannot be regarded as high-profile members of the party and would not attract attention from the Iranian authorities if returned home.

4.5 The State party further submits that the medical statements the complainants presented to the authorities provide evidence of only minor injuries and do not definitively indicate whether the injuries resulted from torture or ill-treatment. The State party claims that the complainants in fact travelled to Finland to reunite with their family only, not because they were concerned about being tortured in the Islamic Republic of Iran.

4.6 It further notes that, under article 3 of the Convention, States parties are prohibited from expelling, returning or extraditing a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. With reference to the Committee's general comment No. 1 (1996) on the implementation of article 3, the State party adds that the complainants must establish the existence of a personal, present and real risk of being subjected to torture upon return to the country of origin. The existence of such a risk must be assessed on grounds that go beyond mere theory or suspicion. Additional grounds must exist for the risk of torture to qualify as real.[10] The following elements must be taken into account to assess the existence of such a risk: evidence of a consistent pattern of gross, flagrant or mass violations of human rights in the country of origin; allegations of torture or ill-treatment sustained by the author in the recent past and independent evidence thereof; political activity of the author within or outside the country of origin; evidence as to the credibility of the author; and factual inconsistencies in the claim of the author.[11]

4.7 The State party refers to the jurisprudence of the European Court of Human Rights, which also refers to the personal nature of risk necessary to trigger protection under the European Convention on Human Rights.[12] The State party submits that there is no indication in the present case that the complainants are currently wanted by the Iranian authorities.

4.8 As to the statements from the two psychiatrists and the physiotherapist who treated Mr. X, the State party recalls that the statements were not made available to the Supreme Administrative Court. Mr. X provided the court with one medical statement only, dated 8 December 2008. According to that statement, the cause of his injuries cannot be definitively determined, and, in any event, the new medical statements do not add any new or significant evidence warranting a different assessment of the case.

Complainants' comments on the State party's observations

5.1 On 21 August 2012, in their comments on the State party's observations, the complainants submitted that there are no contradictions between the statements from the medical doctors and those of the complainants themselves. They also claim that they both made every effort to provide and clarify all the necessary evidence to corroborate their accounts.

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[10] General comment No. 1 (1996) on the implementation of article 3, *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44 and Corr. 1), annex IX, paras. 6 and 7.

[11] Ibid., para. 8.

[12] The State party refers to *Vilvarajah and Others v. the United Kingdom*, European Court of Human Rights, judgment of 30 October 1991.

5.2 The complainants agree that they cannot be regarded as high-profile members of the Komala party. However, they refer to the "Operational guidance note – Iran" published by the United Kingdom Home Office, which states that "applicants who are able to demonstrate that they are members or supporters of … Komala … and who are known to the authorities as such, will be at real risk of persecution".[13]

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering a claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee recalls that, in accordance with article 22, paragraph 5 (b), of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that in the present case, the State party has recognized that the complainants have exhausted all available domestic remedies. Accordingly, the Committee finds no further obstacles to admissibility, it declares the communication admissible and proceeds with its examination on the merits.

Consideration of the merits

7.1 In accordance with article 22, paragraph 4, of the Convention, the Committee has considered the present communication in the light of all the information made available to it by the parties concerned.

7.2 The issue before the Committee is whether the removal of the complainants to the Islamic Republic of Iran would violate the State party's obligation under article 3 of the Convention not to expel or return (*refouler*) a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee must evaluate whether there are substantial grounds for believing that the complainants would be personally in danger of being subjected to torture upon return to the Islamic Republic of Iran. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not of itself constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country. The aim of such a determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would return.

7.3 The Committee notes that the State party itself has recognized that the human rights situation in the Islamic Republic of Iran constitutes a matter of concern and that prominent political opponents of the regime are at risk of torture there. The Committee recalls its own findings regarding the extremely worrisome human rights situation in the Islamic Republic of Iran, particularly for individuals of Kurdish ethnicity, since the elections held in the country in June 2009.[14] In that regard, the Committee takes into consideration the 2014 report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran (A/HRC/25/61), which cites the persecution, imprisonment and execution of members of the Kurdish minority "in the absence of fair trial standards" (paras. 45, 47, 51, 82 and 83). The Committee also notes the 2014 report of the Secretary-General on the situation of human rights in the Islamic Republic of Iran (A/HRC/25/26), which states that several Kurdish prisoners were allegedly executed after having been sentenced to death for charges including *moharebeh* (enmity against God) and for alleged links to political parties, including Komala (para. 9).

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[13] See note 6 above.

7.4 The Committee also recalls its general comment No. 1, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being "highly probable" (para. 6), the Committee notes that the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a foreseeable, real and personal risk.[15] The Committee further recalls that, in accordance with its general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned, while at the same time it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case (para. 9).

7.5 The Committee takes note of the conclusions of two psychiatric examinations as well as the physiotherapist's statement regarding Mr. X, who, according to a medical doctor's conclusion, suffers from post-traumatic stress disorder. The second complainant, Mr. Z, adduced a statement from a general practitioner who finds that "while the injuries seen now are very slight … there is no reason to doubt that they could have been caused during a period of incarceration between April and May 2007" as described by Mr. Z. The Committee takes note of the submission by the State party that the injuries indicated in the medical statements are only minor and that the medical documentation in question does not establish, beyond reasonable doubt, whether the injuries were the consequence of torture or ill-treatment. The Committee observes, however, that the medical certificate provided by Mr. X states that the complainant's medical symptoms are "compatible with the symptoms" of someone who has suffered torture. It also considers that the State party, in the light of those doubts, could have ordered an additional examination of the complainant in order to reach a fully informed conclusion on the matter.

7.6 The Committee notes that both complainants provided certificates of membership of the Komala party, issued by the party's office in Sweden. It also notes that the State party is not disputing the fact that the complainants are part of a politically active and high-profile family, as their father and uncles have also been active in the Komala party and have been persecuted by the Iranian authorities for their political views. The Committee observes that, owing to the complainants' political activities, their family connections to political opposition activists, as well as their previous imprisonment, and notwithstanding the time elapsed since their departure from their country of origin, they are most likely to attract the attention of the authorities upon return to the Islamic Republic of Iran, thus significantly increasing the risk of them being arrested, tortured and sentenced to death, if returned.

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[14] See communications No. 357/2008, *Jahani v. Switzerland*, decision adopted on 23 May 2011, para. 9.4, and No. 381/2009, *Faragollah et al. v. Switzerland*, decision adopted on 21 November 2011, para. 9.4.

[15] See, inter alia, communications No. 203/2002, *A.R. v. Netherlands*, decision adopted on 14 November 2003, and No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November 2005.

7.7 Consequently, and in the light of the general human rights situation in the Islamic Republic of Iran, which particularly affects members of the opposition, and in view of the complainants' political activities in both the Islamic Republic of Iran and abroad, their previous imprisonment and detailed description of torture and ill-treatment suffered there, supported by substantiating elements adduced as proof thereof by the complainants, such as medical documentation, the Committee considers that the material before it is sufficient to conclude that there are substantial grounds for believing that the complainants risk being subjected to torture if returned to the Islamic Republic of Iran.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that there are substantial grounds for believing that the complainants would face a foreseeable, real and personal risk of being subjected to torture by government officials if returned to the Islamic Republic of Iran. The Committee therefore concludes that the deportation of the complainants to the Islamic Republic of Iran would amount to a breach of article 3 of the Convention.

9. The Committee is of the view that the State party has an obligation to refrain from forcibly returning the complainants to the Islamic Republic of Iran or to any other country where they run a real risk of being expelled or returned to the Islamic Republic of Iran. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of the present decision, of the steps it has taken in response to the present decision.

Communication No. 497/2012: *Bairamov v. Kazakhstan*

Submitted by:	Rasim Bairamov (represented by counsel)
Alleged victim:	The complainant
State party:	Kazakhstan
Date of complaint:	6 May 2011 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 14 May 2014,

Having concluded its consideration of complaint No. 497/2012, submitted to the Committee against Torture by Mr. Rasim Bairamov under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1. The complainant is Mr. Rasim Bairamov, a Kazakh national born on 10 July 1982. He claims to be a victim of a violation by Kazakhstan[1] of his rights under articles 1 and 2, paragraph 1; 12; 13; 14; 15 and 16, of the Convention against Torture. He is represented by counsel.[2]

The facts as submitted the complainant

2.1 On 17 July 2008, at around 9 a.m., two persons in civilian clothes apprehended the complainant and dragged him into a car. The complainant tried to resist, but stopped when he saw a gun on the belt of one of his assailants. He was brought to the Criminal Department of the Ministry of Internal Affairs of Rudny City (CDIA), where he was informed that witnesses had testified that he, together with one B., had robbed a store on 28 June 2008. When he denied any involvement in the crime, he was beaten by two police officers, K. and O.

2.2 On the evening of 17 July 2008, the complainant's sister brought him some food and cigarettes and noticed bruises and abrasions on his body. When she visited him the next day, she saw also bruises on his nose and on his face, as police officers had beaten him in the face with a purse, prior to her visit, in an attempt to obtain his confessions in the robbery. When the complainant's sister left, a senior investigation officer told three police officers to stay with the complainant and the other suspect overnight and to get their confessions.

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[1] Kazakhstan made the declaration under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 21 February 2008.

[2] A power of attorney, dated 10 February 2011 and signed by the complainant, is attached to the complaint.

2.3 The complainant was detained for two and a half days at the CDIA without official registration, identification, and without access to a lawyer. During interrogations, police officers tried to force him to confess guilt under torture. Interrogations were conducted continuously in the absence of a lawyer and the complainant was deprived of food and sleep.

2.4 During that night, the complainant could hear the screams of B., who was beaten by police officers. At some point, the police officer O. ran into the room, kicked the complainant's leg and said that B. confessed, and that it was his turn to confess. Shortly after, the complainant was taken to the office where B. was beaten and saw him there, all bruised and exhausted.

2.5 The complainant was hit with a thick folder on the head by a police officer. Another police officer, K., grabbed him by his hair and began to shout curses. Then, he was seated on a chair and one officer kicked him repeatedly in the upper part of his leg. The police officers hit him on the head, kidneys, dragged him by his hair along the corridor, kicked and beat him all over the body, knocked him out of his chair, deprived him of sleep, of food and drink for more than two days. When the complainant lost consciousness, they poured water on him. He was also threatened with sexual violence if he did not confess. One of the officers did not torture him, but was giving instructions to the other two officers: "beat him, no need to talk to him".

2.6 After the beatings, during the night of 19 July 2008, the complainant was presented to an investigation officer, for further questioning. He replied incoherently, as he wanted to sleep and was in pain. On the same day, at 11.40 pm, the complainant and B. were placed in a temporary detention facility. No medical examination was carried out upon admission, and no medical assistance was provided, despite the fact that the complainant had bruises on his back, chest, legs and arms, and there were bumps on his head.

2.7 The complainant was warned that someone would visit him, and that he should repeat the testimony acceptable to the police, otherwise torture would continue. One person indeed visited him, who later turned out to be a prosecutor of Rudny. The visitor did not identify himself and "was not interested in how" the complainant "was mistreated by the police officers". In the morning of 20 July 2008, the investigating officer brought a written testimony to be signed; on this occasion, the complainant saw the ex officio lawyer assigned to him for the first time. The lawyer advised him to sign the documents in order to obtain mitigating circumstances. He explains that he signed because he was in pain.

2.8 On 20 July 2008, the complainant was placed in custody in Rudny. His mother saw him for a few minutes on 24 July 2008, under the supervision of the detention facility's officials. She saw her son with bruises on the bare parts of his hands. She advised him to have his injuries documented, but he replied that this would worsen his situation.

2.9 On 1 August 2008, the complainant was transferred to the temporary detention facility No. 161/1 of Kostanai (IVS). Upon arrival, he was examined by a medical doctor who noticed that he had bruises on his body and refused to receive him in the detention centre, saying that the complainant would later claim that he was ill-treated in the IVS. The official, accompanying the complainant, was very angry, and the complainant was forced to say that he sustained those bruises when he hit the bed in his previous cell. Only then he was admitted in the IVS.

2.10 On 5 August 2008, three weeks after the complainant's arrest, his mother saw numerous bruises on various parts of his body during a search in the visiting room of the IVS. She filed a complaint to the IVS administration, requesting them to issue a report about the complainant's medical condition at the time of admission to IVS. She was provided a note to the effect that the complainant had no claims and that no bodily injuries were disclosed. The author's mother filed another request for a medical report. She was provided with the same note, with a remark "repeated" to the effect that the complainant had no complaints whatsoever at the time of admission, and no injuries were disclosed upon his admission.

2.11 The complainant filed the first complaint of torture to a prosecutor of Rudny during his visit to the IVS. As a result, the pressure from police increased. Subsequently, on 12 August 2008, he lodged a complaint with the Prosecutor's Office of the Kostanai Region. On 19 August 2008, his mother also filed a complaint to the Prosecutor's Office of the Kostanai Region.

2.12 On 5 September 2008, the Prosecutor's Office of Rudny informed the complainant's mother that her complaint was forwarded to the Department of Internal Security of the Department of Internal Affairs of the Kostanai Region (RDIA), for further action. The RDIA forwarded the complaint for examination to the CDIA. On 19 September 2008, the CDIA refused to initiate criminal proceedings against the police officers due to lack of evidence.

2.13 On 7 October 2008, the complainant's mother appealed against the decisions of both the CDIA and the Rudny Prosecutor's Office to the Prosecutor's Office of the Kostanai Region. On 20 October 2008, the Rudny City Prosecutor's Office upheld the CDIA's refusal to initiate criminal proceedings. This decision was quashed by the Regional Prosecutor's Office on 17 November 2008, due to incomplete investigation. The case was then referred back to the RDIA, for further investigation.

2.14 On 21 October 2008, the Rudny City Court found the complainant and B. guilty of having committed a crime under article 179, paragraph 2 'a', of the Criminal Code (robbery committed in a group) and sentenced the complainant to five years of imprisonment with confiscation of property. The court retained his initial confessions. Although he retracted his confessions during the trial and pointed out the ill-treatment inflicted on him, the court found his claims unfounded and not corroborated by any objective evidence. On appeal, the complainant claimed, inter alia, that his sentence was based on his forced confessions. The appeal was, however, dismissed by the Kostanai Regional Court on 2 December 2008. On 11 December 2008, he requested the Regional Prosecutor's Office to lodge a protest motion under the supervisory review proceedings against the decision of the Kostanai Regional Court, but the request was rejected. On 23 December 2008, he filed another application for supervisory review, to the Kostanai Regional Court, which was rejected on 12 January 2009. A further supervisory review application was rejected by the Supreme Court on 9 June 2009.

2.15 On 27 December 2008, the complainant started serving his sentence at the Colony No. 161/7. Each time when his mother visited him there, she noticed that his state of health was deteriorating. On 12 November 2009, he was brought unconscious to the Colony's Medical Unit. In December 2009, he was diagnosed with pneumonia. However, the medication prescribed by the medical doctor and delivered by the complainant's mother, gave no results. He received treatment at the Colony's Medical Unit until 28 October 2010 and only then he was transferred to the Colony No. 164/8 for detainees infected with tuberculosis.

2.16 On 21 November 2008, the complainant's mother complained to the RDIA pointing to a number of deficiencies of the investigation concerning the complainant's ill-treatment by the CDIA officers, inter alia, noting their failure to interview the complainant and to take statements from witnesses. On 5 December 2008, the RDIA decided not to initiate criminal proceedings thereon.

2.17 On 8 January 2009, the Rudny City Prosecutor's Office quashed the CDIA's refusal of 9 November 2008 to initiate criminal proceedings and sent the materials back for further investigation. The investigation was again carried out by the CDIA, where the complainant was ill-treated. On 20 December 2008, the CDIA again refused to initiate criminal proceedings. On 30 April 2009, the decision was reversed by the Rudny City's Prosecutor and the case materials were sent back for additional investigation. On 12 March 2009, the CDIA refused to have criminal proceedings initiated.

2.18 On 25 May 2009, the CDIA again refused to initiate criminal proceedings. This refusal was again quashed by the Rudny City Prosecutor on 17 June 2009. On 29 September 2009, the complainant's mother filed an application with the Head of the Department of Internal Affairs of the Kostanai Region, requesting that the investigation be transferred to another body, claiming that CDIA officers had an interest in the case, and that the investigation lacked impartiality and was superficial. The case was then transferred from the Department of Internal Security to the RDIA, which, however, was under the same chain of command. After a summary questioning of a number of police officers, the RDIA refused to initiate criminal proceedings due lack of evidence.

2.19 On 28 April 2010, the complainant's mother complained about the delayed investigation regarding her son's ill-treatment to the Ministry of Internal Affairs in Astana. The fact that the investigation was delayed for 21 months, and the violations committed by police officers were rendered public by the complainant's mother during a press conference organized on 12 May 2010. On 17 May 2010, the Prosecutor's Office of Kostanai Region upheld the decision of the Department of Internal Security of 1 March 2010[3] not to institute criminal proceedings against the police for of lack of evidence. The decision was based on the complainant's sentence handed down by the Rudny City Court on 21 October 2008, where the court found the complainant's allegations of forced confessions unfounded.

The complaint

3.1 The complainant claims that the treatments inflicted on him to force him to confess guilt shortly after his apprehension, in the absence of a lawyer, amounts to torture within the meaning of article 1 of the Convention. He was beaten for a long period of time and sustained injuries of different severity. Moreover, during long interrogations, he was deprived of food, drinking and sleep for two days, which exacerbated his suffering.

3.2 Further, he claims that the State party failed to establish adequate safeguards against torture and ill-treatment. His apprehension and subsequent detention by the police were not registered and he had no access to a lawyer after his apprehension, which facilitated his torture at the hands of police, contrary to article 2 (1) of the Convention. Relatives and other people have seen him before his apprehension and they can confirm that he had no injuries. The injuries he sustained remained undocumented because he was intimidated and forced to affirm that they were not the consequence of beatings by police officers.

3.3 The complainant also submits that the State party failed to conduct a prompt and adequate investigation for purposes of articles 12 and 13 of the Convention. The CDIA and the RDIA had repeatedly refused to initiate criminal proceedings; these refusals were subsequently quashed by the Prosecutor's Office on a number of occasions. No appropriate investigation was carried out, as interested police officers failed to conduct a proper inquiry. The investigation into his allegations lasted for about two and a half years and was conducted neither by an independent nor an impartial body. In addition, the investigation was carried out by the police department, where the torture in question had taken place. Further, the effectiveness of the investigation was also compromised by the reluctance of the authorities to obtain objective evidence and make unbiased conclusions.

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[3] The complainant had no knowledge of this decision and has never received a copy of it.

3.4 Furthermore, the complainant claims that the right to compensation for harm caused by the actions of law enforcement officials is recognized only after conviction of the officials in criminal proceedings. The absence of criminal proceedings deprived him of the possibility of filling a civil claim for compensation, in violation of article 14 of the Convention.

3.5 He submits that, contrary to the guarantees under article 15 of the Convention, his forced confessions were retained by the court when establishing his guilt.

3.6 He further claims that his health condition requires specialized examination and adequate medical treatment that he cannot get in a regular prison as he contracted infiltrative tuberculosis complicated with tuberculosis pleurisy, which amounts to a violation of his rights under article 16 of the Convention.

State party's observations on admissibility and merits

4.1 By note verbale of 14 June 2012, the State party submitted its observations on admissibility and merits. It notes that on 11 May 2010, the Department of Internal Affairs of the Kostanai Region received a claim from the complainant's mother about her son's ill-treatment by the CDIA's police officers K., O. and S. On 17 May 2010, the investigator T. V. of the RDIA decided not to initiate criminal proceedings as a decision refusing to institute such proceedings had already been adopted thereon and it had not been quashed. In this regard, the State party notes that the complainant's mother had previously submitted a number of similar complaints regarding her son's ill-treatment to the Department of Internal Affairs of the Kostanai Region and to the RDIA. All her complaints were duly examined and the national authorities did not establish that the complainant had been subjected to physical or psychological ill-treatment with the aim of extracting his confessions. Consequently, a number of decisions were adopted refusing to have criminal proceedings initiated.

4.2 The State party further submits a brief overview of the facts concerning the criminal proceedings against the complainant and his co-accused B. It notes that on 21 August 2008, the Rudny City Court found the complainant and B. guilty of having committed a crime under article 179, paragraph 2 'a', of the Criminal Code (robbery committed in a group) and sentenced them to five years of imprisonment. Both the complainant and B. appealed the decision of 21 August 2008, but their appeal was rejected by the Kostanai Regional Court on 2 December 2008. On 23 December 2008, the complainant's counsel requested the Kostanai Regional Court to review the decisions of 21 August and 2 December 2008 within supervisory review proceedings. This request was dismissed as unfounded on 12 January 2009. Thereafter, a complaint concerning the lower courts' decisions was submitted within the supervisory review proceedings to the Supreme Court; but it was dismissed on 9 June 2009 as manifestly ill-founded.

4.3 The State party maintains that the complainant's claims under articles 1; 2; 12; 13; 14; 15 and 16 of the Convention against Torture are inadmissible as the allegations concerning his ill-treatment aimed at obtaining his forced confessions are not corroborated by any evidence and, therefore, are unfounded.

4.4 The State party notes that the complainant confessed guilt during the pretrial investigation. The complainant and B. both admitted that they decided to rob the shop in question on 28 June 2008. On the same day, they entered the shop, B. ordered the shopkeeper to lie on the ground and they stole 36,000 tenge and three bottles of beer. However, later in the course of the pretrial investigation, both co-accused changed their initial confessions and started denying any involvement in the robbery. The State party further notes that the complainant's guilt was duly established during the criminal proceedings and in court. The court also examined his allegations of ill-treatment during the pretrial investigation, but found them to be groundless. In this connection, the State party points out the statements of the victims and several witnesses confirming that the complainant and B. did rob the shop on 28 June 2008. It also points out that during the court proceedings, the police officers K. and O. testified that the complainant, voluntarily, and in the presence of his counsel, confessed to having committed the robbery, and he also confessed guilt during a cross-examination between him and the victims.

4.5 The State party further rejects as ill-founded the claims on ineffective and prolonged investigation regarding the complainant's alleged ill-treatment and the authorities' failure to ensure compensation for harm caused by officials. It reiterates that on 11 May 2010, the Department of Internal Affairs of the Kostanai Region received the mother's complaint about the complainant's ill-treatment by the CDIA. During the pre-investigation examination, on 14 May 2010, the complainant requested to terminate any further investigation into his mother's complaint, as he had not been subjected to ill-treatment; he did not contest the court's judgment and the sentence and he had no claims against anyone. Consequently, on 17 May 2010, the investigator T.V. of the RDIA decided not to initiate criminal proceedings as a decision refusing to institute proceedings had already been adopted in that regard and it had not been quashed. The complainant's mother's previous complaints were examined, but were not confirmed. Consequently, a number of decisions were adopted refusing to initiate criminal proceedings. All decisions were adopted within the time limits as set out in national laws.

4.6 As to the issue of redress, the State party points out that under article 42 of the Criminal Procedure Code, when a court decides to partly or fully rehabilitate a person, the institution responsible for performing criminal proceedings is obliged to acknowledge that person's right to compensation. A partly or fully rehabilitated person is personally informed of the court's decision and s/he is informed of the procedure for compensation of damages. In this connection, the State party notes that the national authorities established that the complainant was not subjected to any physical or psychological ill-treatment. Moreover, the courts did not acquit him, nor was a decision adopted to terminate the initiated criminal proceedings against him or to annul any decision adopted within the criminal proceedings, as unlawful. Therefore, there were no grounds for compensating him.

4.7 The State party maintains that the complainant's claims that he did not have access to effective domestic remedies and that his forced confession was used by the court as evidence are manifestly ill-founded. The complainant and his defence appealed all judicial decisions adopted in his case, up to the Supreme Court. In particular, the Rudny City Court of the Kostanai Region concluded that, inter alia, the complainant's confessions, as well as investigation actions confirming his participation in the robbery on 28 June 2008, were permissible and acceptable, and that the aggregated evidence as a whole was sufficient to establish his guilt in the robbery. In addition, the judgment of 21 August 2008 of the Rudny City Court of the Kostanai Region was based not only on the complainant's confession, but also on a multitude of other evidence, all examined by the court.

4.8 As to the alleged failure to provide the complainant with medical treatment after his ill-treatment that aggravated his health status, the State party submits that, according to the reports of the Head of the Criminal Colony UK-161/1 of 26 November and of 10 December 2008, upon the complainant's arrival at the colony on 1 August 2008, during his medical examination he did not complain about any injuries. In addition, no bodily injuries were revealed on him. Further, the fact that he contracted infiltrative tuberculosis complicated with tuberculosis pleurisy can in no way be linked to the ill-treatment alleged.

4.9 In light of the above considerations, the State party maintains that the complainant's allegations that he was subjected to ill-treatment by the CDIA police officers and his claims under articles 1; 12; 13; 14; 15 and 16 of the Convention are manifestly ill-founded and inadmissible.

Complainant's comments on the State party's observations on admissibility and merits

5.1 On 23 September 2012, the complainant briefly reiterated the circumstances of his apprehension on 17 July 2008. He further notes that, according to the State party's submission, the national authorities received his mother's initial complaint concerning his ill-treatment by the police officers of the CDIA on 11 May 2010 only. In this regard, he notes that, in its observations, the State party refers to her complaint of May 2010; however, her first complaint regarding his ill-treatment was submitted already on 5 August 2008, after she visited him at the temporary detention facility and saw bruises on his body. The complainant himself lodged his first complaint to the Prosecutors Office of Rudny City and, thereafter, to the Regional Prosecutor's Office of the Kostanai Region on 12 August 2008.

5.2 The complainant further points out that the State party has not provided any information as to what exact actions had been carried in the context of examination of his or his mother's complaints concerning his ill-treatment. He also notes that the examination of his ill-treatment claim lasted for more than two years. Following the CDIA's refusal to initiate criminal proceedings, the complaints concerning his ill-treatment were examined by the Office of Internal Security of the Department of Internal Affairs, which concluded that mere allegations of ill-treatment were insufficient grounds for initiating criminal proceedings. The complainant reiterates that the authorities failed to conduct an effective investigation as, for example, the place where he was ill-treated was not examined; the responsible police officers were not cross-examined; confrontations were not carried out; no witnesses were questioned; and no forensic examinations were performed. The complainant notes that the lack of a complex investigation into his ill-treatment demonstrates the superficial approach of the authorities to such examinations. In addition, the complainant had no access to the examination materials.

5.3 The complainant points out that, in 2008, the Committee noted, regarding the State party, that "the preliminary examinations of reports and complaints of torture and ill-treatment by police officers are undertaken by the Department of Internal Security, which is under the same chain of command as the regular police force, and consequently do not lead to prompt and impartial examinations".[4] The Committee also has criticized the lack of independent bodies to investigate acts of torture, in particular with regard to torture by the police, because the police is usually the same agency that is tasked to conduct investigations into allegations of torture.[5] The complainant also points out that, according to the Committee, in general, investigation of torture by the police should not be conducted by police or under its auspices.

5.4 The complainant further notes that he was questioned by the "advisory council" of the Department of Internal Affairs about his ill-treatment only after a press conference was held on 12 May 2010. He notes that he was questioned by the advisory council, on 14 May 2010, with the purpose of obtaining information for the authorities to justify the delay (21 months) regarding the investigation of his torture allegations. He submits that one day before the council's visit, he was summoned to the "Head of the Operative Division" A.S., who told him that if he wanted to continue serving his sentence without problems, he should not complain to the council. As a result, on 14 May 2010, before the advisory council, the complainant first started to describe his ill-treatment suffered naming the police officers responsible; shortly after, however, fearing for his safety, he revoked all his previous complaints concerning his ill-treatment, contending that in fact no one ever beat him. This statement was video recorded by a representative of the advisory council and transmitted to mass media. On this occasion, he signed a statement that he had not been subjected to ill-treatment and that he had no further complaints.

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[4] Concluding observations regarding the second periodic report of Kazakhstan, United Nations Document CAT/C/KAZ/CO/2, 12 December 2008, para. 24.

[5] Ibid.

5.5 On 5 May 2011, the complainant was released on parole due to his health status. He notes that only following his release, he was able to provide details regarding the context in which he made his statement of 14 May 2010, which was submitted by the State party together with its observations, whereby he revoked his ill-treatment complaints. He adds that, in particular, at the time, the Deputy Head of the Operations and Regime Work demanded that the complainant rejected all his complaints against the CDIA or he would experience "all the charms of the Colony". He points out that he was completely dependent on the mercy of the administration of the Kushmurunskiy Colony No. 161/4, which is known for its high rate of inmate deaths and, therefore, he decided to sign the statement.

5.6 The complainant adds that he is ready to undergo a polygraph (lie detector) test concerning the ill-treatment suffered. He reiterates that every detainee is dependent on the prison administration and that he had been threatened by the Head of Operations A. and his Deputy B. and asked to revoke his complaints against the CDIA. Upon arrival at the Colony No. 161/1 on 27 December 2008, he was held in the quarantine unit for 10 days, in harsh conditions and he was ill-treated there. Thereafter, he was assigned to the squad No. 9 where his ill-treatment continued. Due to harsh conditions and poor nutrition, he got infected with tuberculosis and was placed in the Medical Unit on 12 November 2009. He was treated there until 28 October 2010; however, the health care provided was inadequate. Since his release on 5 May 2011, he is still undergoing treatment and is registered in a clinic specializing in tuberculosis.

The parties' further submissions

6.1 On 11 January 2013 and 19 June 2013, the State party reiterated that the complainant's allegations about his ill-treatment by the police officers of the CDIA are groundless. In the context of the present complaint, the State party has not violated any provisions of the Convention and, therefore, the present communication is inadmissible as manifestly ill-founded.

6.2 On 6 March 2013, the complainant noted that the State party has submitted no new information or argumentation concerning the admissibility and merits of his complaint, but merely maintains that he was not tortured while in police detention. He reiterates his previous claims, requests the Committee to examine the admissibility and merits of the complaint, and lists recommendations which the State party should be invited to implement.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims contained in a complaint, the Committee must decide whether or not it is admissible under article 22 of the Convention.

7.2 The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.3 The Committee further notes that the State party does not dispute that domestic remedies have been exhausted[6] and, thus, it is not precluded by the requirements of article 22, paragraph 5 (b), of the Convention, from examining the communication.

7.4 The Committee has noted the complainant's claims under article 16 of the Convention concerning the allegedly inadequate health care provided to him, and of the poor conditions of detention while he was in the prison colony. It observes, however, that, in support of his allegations, the complainant submits no medical documentation or other evidence concerning the medical treatment he was provided with while in detention, regarding the deterioration of his state of health or about his eventual complaints regarding the allegedly inadequate health care provided. Consequently, and in the absence of any other pertinent information on file, the Committee considers that this part of the communication is insufficiently substantiated for the purposes of admissibility, and declares it inadmissible under article 22, paragraph 2 of the Convention.[7]

7.5 Further, the Committee notes the complainant's allegations under articles 1; 2; 12; 13; 14 and 15 of the Convention. It notes that the State party challenges their admissibility, as manifestly unfounded. In light of the material before it, however, the Committee considers that the arguments put forward by the complainant raise substantive issues, which should be dealt with on the merits.[8] Accordingly, the Committee finds no further obstacles to the admissibility. Accordingly, it declares this part of the communication admissible and proceeds with its consideration on the merits.

Consideration of the merits

8.1 The Committee has considered the communication in the light of all information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention.

8.2 The Committee notes that the complainant has alleged a violation of article 1 in conjunction with article 2, paragraph 1, of the Convention, on the grounds that the State party failed in its duty to prevent and punish acts of torture. These provisions are applicable insofar as the acts to which the complainant was allegedly subjected should be considered as acts of torture within the meaning of article 1 of the Convention.[9] In this respect, the Committee notes the complainant's detailed description of the treatment he was allegedly subjected to by the police officers of the CDIA in July 2008 immediately after his unrecorded apprehension and detention, in the absence of a defence lawyer, to force him to confess guilt in a robbery. In addition, the complainant has provided the names of the police officers who had allegedly ill-treated him to the point he confessed guilt. The Committee considers that this treatment in question can be regarded as amounting to torture, which is inflicted deliberately by officials with a view to obtain forced confessions. The Committee also notes that the State party merely denies that the complainant was ill-treated at all, without however, providing sufficient explanations as to how adequately, in practice, had the authorities addressed the complainant's and his mother's claims regarding the ill-treatment/torture suffered.

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[6] See, e.g., communication No. 225/2003 (CAT/C/32/D/225/2003), *R.S. v. Denmark*, decision of 19 May 2004, para. 6.1.

[7] See, e.g., communication No.434/2010 (CAT/C/51/D/434/2010), *Y.G.H. et al. v. Australia*, decision of 14 November 2013, para. 7.4.

[8] For a similar approach, see, e.g., communication No. 435/2010 (CAT/C/49/D/435/2010), *G.B.M. v. Sweden*, decision of 14 November 2012, para. 6.3.

[9] See communication No. 269/2005 (CAT/C/39/D/269/2005), *Ali Ben Salem v. Tunisia*, decision of 7 November 2007, para. 16.4.

8.3 Although the complainant has not submitted any medical report documenting the injuries he sustained as a result of ill-treatment by the police officers of the CDIA, the Committee notes that he made consistent statements about his ill-treatment before the national authorities, including during the criminal proceedings, in court, up to the highest jurisdiction. The Committee further notes the complainant's statement that he was not provided with any medical assistance upon his placement in the temporary detention facility and that when he arrived at the Colony No. 161/1 on 1 August 2008, the medical personnel there refused to admit it or to document his bruises in his medical records. The Committee notes that the State party has not specifically refuted these allegations. In these circumstances, the Committee decides that due weight must be given to the complainant's allegations, in particular, given that only the penitentiary medical personnel were available to him and he could not approach an independent medical expert, who could record/document his injuries. Moreover, the Committee notes the complainant's unrefuted allegations to the effect that he was neither questioned, nor did he undergo a medical-forensic examination when the State authorities received his or his mother's initial complaints about the ill-treatment suffered. As to the State party's submission that, on 14 May 2010, the complainant signed a statement revoking his complaints against the CDIA police officers, the Committee takes note of the complainant's explanation that he signed the mentioned statement as he was threatened and put under pressure to do so by the penitentiary administration in order not to face adverse consequences.

8.4 Taking into account the above-mentioned considerations, the Committee notes that it is uncontested that the complainant was in police detention at the time he claims he was subjected to torture and sustained serious injuries. The State party has also not refuted the complainant's allegation to the effect that his apprehension and subsequent police detention remained undocumented for at least two days, and that he was not represented by a lawyer during this period of time. Nor has it contested the fact that the complainant's mother had requested, on two occasions, the administration of the IVS to provide her with a medical report about the complainant's medical condition at the time of his admission to the IVS; however, the Head of the IVS issued her only a brief reply stating that the complainant had no claims and that no bodily injuries were disclosed upon admission.[10] In addition, it remains uncontested that the complainant and his mother complained, both, throughout the pretrial investigation and in court, about the complainant's ill-treatment by the police officers of the CDIA. In this context, the Committee notes that the State party has not provided comprehensive explanations concerning the concrete manner in which the claims in question were addressed by its competent authorities. Furthermore, the Committee notes that the State party has not provided the complainant's medical records attesting the complainant's state of health upon his admission to IVS and corroborating the State party's statement that no injuries had been established on him. Under these circumstances, and in light of the detailed account which the complainant has given of the ill-treatment to which he was subjected to force him confess guilt, and given that no objective evidence in the form of medical documentation was presented by the State party to disprove the complainant's allegations concerning the inflicted injuries, as well as, in light of the information and documents on file, the Committee concludes in the present case that due weight must be given to the complainant's allegations.[11] The Committee further concludes that the facts as presented reveal that the manner in which the complainant was treated at the early stages of his detention by police, who carried out the investigation during that time and resulted in the complainant's forced confessions, in the absence of a lawyer, amount to a violation, by the State party, of article 1 of the Convention, read together with article 2, paragraph 1, of the Convention, due to the authorities' failure to prevent and punish acts of torture.

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[10] See para. 2.10 above.

[11] See for example communication No. 207/2002 (CAT/C/33/D/207/2002), *Dimitrijevic v. Serbia and Montenegro*, decision of 24 November 2004, para. 5.3; communication No. 172/2000 (CAT/C/35/D/172/2000), *Dimitrijevic v. Serbia and Montenegro*, decision of 16 November 2005, para. 7.1.

8.5 The Committee notes that the complainant claims that no prompt, impartial or effective investigation has been carried out into his torture allegations and that those responsible have not been prosecuted, in violation of articles 12 and 13 of the Convention. The Committee notes that, although the complainant reported the acts of torture shortly after their occurrence when a prosecutor of the Rudny City Prosecutor's Office visited the detention facility where the complainant was held, a preliminary inquiry was initiated only after approximately one month, when the Rudny City Prosecutor's Office informed the complainant's mother that her complaint was forwarded to the RDIA for examination. Furthermore, both the RDIA and the CDIA repeatedly refused to initiate criminal proceedings, due to lack of evidence. The complainant also claims that, in fact, no appropriate investigation was carried out in his case, since police officers, i.e. interested persons, failed to conduct a comprehensive investigation. In addition, the investigation into his allegations lasted for about two and a half years and was never conducted by an independent authority. His complaints concerning the facts of torture before the courts were also disregarded; no investigation was initiated and no criminal responsibility was attributed to those responsible.

8.6 The Committee recalls that an investigation in itself is not sufficient to demonstrate the State party's compliance with its obligations under article 12 of the Convention if it can be shown not to have been conducted impartially.[12] In this respect, it notes that in this case, the investigation was entrusted to the Criminal Department of the Department of Internal Affairs of Rudny City (CDIA) and the Department of Internal Security of the Department of Internal Affairs of the Kostanai Region (RDIA), i.e. the same institution where the alleged torture had been committed and an institution under the same chain of command. In this context, the Committee recalls its concern that preliminary examinations of complaints of torture and ill-treatment by police officers are undertaken by the Department of Internal Security, which is under the same chain of command as the regular police force, and consequently do not lead to impartial examinations.[13]

8.7 The Committee further recalls that article 12 requires that the investigation should be prompt and impartial, promptness being essential both to ensure that the victim cannot continue to be subjected to such acts and also because in general, unless the methods employed have permanent or serious effects, the physical traces of torture, and especially of cruel, inhuman or degrading treatment, soon disappear.[14] In this case a preliminary investigation was started after more than a month from the reported facts of torture on 17 and 18 July 2008. This investigation relied heavily on the testimony of the alleged perpetrators – police officers, who denied any involvement in the torture, but attached no or little weight to the complainant's and his relatives' statements. In this regard, the Committee notes that, according to the information on file, the complainant himself was never questioned by any officials regarding his ill-treatment; no medical-forensic examination was performed on him. Consequently, it was refused to initiate criminal proceedings and no criminal charges were brought against the alleged perpetrators, due to lack of evidence. As a result, no remedy could be provided to the complainant.

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[12] See communication No. 257/2004 (CAT/C/41/D/257/2004), *Kostadin Nikolov Keremedchiev v. Bulgaria*, decision of 11 November 2008, para. 9.4.

[13] See concluding observations regarding the second periodic report of Kazakhstan, United Nations document CAT/C/KAZ/CO/2, 12 December 2008, para. 24.

[14] Communication No. 59/1996 (CAT/C/20/D/59/1996), *Encarnación Blanco Abad v. Spain*, decision of 14 May 1998, para. 8.2.

8.8 In these circumstances and in light of the materials before it, the Committee concludes that the State party has failed to comply with its obligation to carry out a prompt and impartial investigation into the allegations of torture or to ensure the complainant's right to complain and to have his case promptly and impartially examined by the competent authorities, in violation of articles 12 and 13 of the Convention.

8.9 With regard to the alleged violation of article 14 of the Convention, the Committee notes that it is uncontested that the absence of criminal proceedings deprived the complainant of the possibility of filing a civil suit for compensation since the right to compensation for torture arises only after conviction of those responsible by a criminal court in the State party. The Committee recalls that article 14 of the Convention recognizes not only the right to a fair and adequate compensation, but also requires States parties to ensure that victims of torture obtain redress. The redress should cover all the harm suffered by the victim, including restitution, compensation, rehabilitation of the victim and measures to guarantee that there is no recurrence of the violations, while always bearing in mind the circumstances of each case.[15] The Committee considers that, notwithstanding the evidentiary benefits to victims afforded by a criminal investigation, civil proceedings and victims' claims for reparation should not be dependent on the conclusion of a criminal proceeding. It considers that compensation should not be delayed until establishment of criminal liability. Civil proceedings should be available independently of criminal proceedings and necessary legislation and institutions for such civil procedures should be in place. If criminal proceedings are required under domestic law to take place before civil compensation can be sought, then the absence or delay of those criminal proceedings constitute a failure on behalf of the State party to fulfil its obligations under the Convention. The Committee emphasizes that disciplinary or administrative remedies without access to effective judicial review cannot be deemed to constitute adequate redress in the context of article 14. In light of this, and in the circumstances of the present case, the Committee concludes that the State party is also in breach of its obligations under article 14 of the Convention.[16]

8.10 As to the alleged violation of article 15 of the Convention, the Committee observes that the broad scope of the prohibition in article 15 of the Convention, proscribing the invocation of any statement which is established to have been made as a result of torture as evidence "in any proceedings", is a function of the absolute nature of the prohibition of torture and it implies an obligation for States parties to ascertain whether or not statements admitted as evidence in any proceedings for which it has jurisdiction have been made as a result of torture.[17] In this connection, the Committee observes that, in the present case, the national courts failed to address adequately the complainant's repeated claims regarding his forced confessions. In the absence of any other pertinent information in this regard on file, the Committee considers that the State party's authorities have failed to duly ascertain whether or not statements admitted as evidence in the proceedings have been made as a result of torture. In these circumstances, the Committee concludes that the State party has also breached its obligations under article 15 of the Convention.

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[15] See communication No. 269/2005 (CAT/C/39/D/269/2005), *Ali Ben Salem v. Tunisia*, decision of 7 November 2007, para. 16.8.

[16] See, e.g., communication No. 207/2002 (CAT/C/33/D/207/2002), *Dimitrijevic v. Serbia and Montenegro*, decision of 24 November 2004, para. 5.5.

[17] See e.g. communication No. 219/2002 (CAT/C/30/D/219/2002), *G.K. v. Switzerland*, decision adopted on 7 May 2003, para. 6.10.

9. The Committee, acting under article 22, paragraph 7 of the Convention, is of the view that the facts before it disclose violations of article 1 in conjunction with article 2, paragraph 1; and of articles 12; 13; 14; and 15, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

10. The Committee urges the State party to conduct a proper, impartial and independent investigation in order to bring to justice those responsible for the complainant's treatment, to provide the complainant with full and adequate reparation, including compensation and rehabilitation, and to prevent similar violations in the future. Pursuant to rule 118, paragraph 5, of its rules of procedure, the State party should inform the Committee, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the present decision.

Communication No. 503/2012: *Ntikarahera v. Burundi*

Submitted by:	Boniface Ntikarahera, represented by Track Impunity Always (TRIAL)
Alleged victim:	The complainant
State party:	Burundi
Date of complaint:	12 April 2012 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 12 May 2014,

Having concluded its consideration of complaint No. 503/2012, submitted to the Committee against Torture by Mr. Boniface Ntikarahera under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is Mr. Boniface Ntikarahera, born in 1971 in Kirambi, Rusaka commune, Mwaro Province, and residing in Nyakabiga commune, Bujumbura Province, Burundi. He claims he was the victim of violations of article 2, paragraph 1, and articles 11, 12, 13 and 14, read in conjunction with article 1 or, alternatively, article 16 of the Convention. The complainant is represented by counsel.

1.2 On 25 April 2012, in accordance with paragraph 1 of rule 114 (formerly rule 108) of its rules of procedure (CAT/C/3/Rev.5), the Committee requested the State party to adopt effective measures, throughout the duration of the Committee's consideration of the complaint, to prevent any threats or acts of violence to which the complainant or his family might be exposed, in particular as a result of having lodged the present complaint.

The facts as submitted by the complainant

2.1 The complainant is a night watchman at Prince Regent Charles Hospital in Bujumbura. On the night of 17 October 2010, at approximately 3 a.m., he watched two white pickup trucks park in front of the hospital's emergency room. The complainant went to the vehicles to see whether anybody required medical attention. It was then that he recognized the mayor and the municipal police commissioner of Bujumbura. They were accompanied by 11 unidentified individuals, some of them wearing police uniforms and others dressed in civilian clothes. The mayor, who seemed extremely agitated, ordered the complainant to go get the medical attendants. Four police officers then threw two injured persons, one of whom was covered in blood and could not stand up, to the ground in front of the emergency room. The reason the mayor was so nervous was that he had just been involved in a fight with some young people in a nightclub in central Bujumbura. The two individuals had been injured when the police stepped in to protect the mayor during the fight.

2.2 Having realized that the mayor planned to abandon the two injured persons in front of the hospital, the complainant asked him about medical coverage for the two individuals and whether he intended to pay the necessary security deposit. By way of response, the mayor slapped him hard, twice. Police officers then started to chase the complainant, who was trying to run away, and caught him. The commissioner shoved the complainant, and when he fell to the ground, started kicking him violently in the back and elsewhere. Due to the force of the blows, the complainant started bleeding from the mouth and was crying out in pain. Nonetheless, four police officers continued to strike him and to slap him across the face. During the incident, the mayor encouraged the police officers to continue the violent beating, which lasted about 10 minutes in total. In addition to insulting the complainant, the mayor ordered his men to "finish off this drug addict".

2.3 Having heard the screams, one of the complainant's colleagues arrived on the scene, realized with horror what was happening, and ran to notify police officers in the hospital's prison unit. However, as they recognized the mayor right away, none of them dared to intervene. Having noticed that medical attendants were at the scene, however, and that they had seen the complainant's bloodied body, those officers were urged to leave straight away. The municipal police commissioner then ordered his police officers to handcuff the complainant. His hands and feet were secured, and he was shoved into the back of one of the vehicles. Once inside, the police officers continued to beat him with the butts of their rifles, especially in the ribs. He was also kicked in the temple, which caused him to lose consciousness temporarily.

2.4 Before dawn, the complainant was taken to the criminal investigation police (formerly the Special Investigation Brigade) and placed in detention in a cramped cell, still handcuffed and in an alarming physical state following the beating. The police officers guarding him were ordered not to remove his handcuffs. His handcuffs were not taken off until midday on 18 October 2010, that is, after he had been handcuffed for 32 hours. There were approximately 40 detainees in the cell. Given the lack of space, some had to sleep outside the cell in an enclosed courtyard guarded from the outside by police officers.

2.5 On arriving at the jail of the criminal investigation police, the complainant had asked to see a physician, as he was in a great deal of pain from the injuries he had sustained, was bleeding from the mouth and was incontinent. However, despite his repeated requests, he was initially denied the right to see a doctor. It was not until the next day, 18 October 2010, that a doctor from Prince Regent Charles Hospital came to visit him and was able to provide him with basic care to stop the bleeding and to treat and bandage his left leg. The complainant was held in the same premises for four days, from 17 to 20 October 2010. He was never informed of the reasons for his detention, and no judicial authority ruled on its legality. Having been told unofficially by a police officer that the complainant was being held in the premises of the criminal investigation police, his colleagues visited him on 17 October 2010 and the following days to bring him food, since he did not receive any meals from the prison administration at any stage during his detention. During the first visit from his colleagues, the complainant remained handcuffed and needed help to eat.

2.6 After that first visit, the complainant's colleagues notified Radio Publique Africaine (RPA). On 18 October 2010, a journalist visited the complainant, and the news of his beating and detention was broadcast on the radio the same day. That broadcast elicited a strong reaction from the Burundian authorities: the day after the broadcast, the municipal police commissioner himself went to the radio station, where he announced, in a threatening tone, that the complainant would not be released. Following the broadcast, on 27 July 2011, journalists from RPA were brought before the Bujumbura *tribunal de grande instance* (court of major jurisdiction) by the Public Prosecutor's Office on charges of having defamed the mayor and damaged his reputation, offences that are punishable under the Criminal Code. The case was still pending at the time that this complaint was submitted to the Committee.

2.7 On 20 October 2010, while the complainant was still being held in the premises of the criminal investigation police, the staff of Prince Regent Charles Hospital began a strike, with the agreement of the hospital administration, with a view to securing his release. Several hours later, the complainant was released and admitted to Prince Regent Charles Hospital for emergency treatment, as he was still suffering from throbbing pains in his head, back, the left side of his ribcage and left leg, which was swollen, and was still suffering from incontinence. Medical examinations revealed that some of his pain was caused by a hemothorax on his left side associated with a scapular injury, wounds on his wrists and on the inside of his left leg, blood in his urine and headaches.[1] The complainant had to be hospitalized from 20 October to 23 November 2010, during which time he received treatment and painkillers. After he was discharged, he continued to receive treatment regularly, particularly for his left leg. In April 2011, he had to be admitted to hospital again, as his left leg was still very painful and he had not recovered full mobility. He had to undergo surgery on his leg and remained in hospital from 3 April to 5 May 2011.[2] Nevertheless, the complainant still has pain in his left leg and has not recovered full mobility to date.

2.8 The complainant indicates that he reported the incidents to the proper authorities. Several days after his release, on 5 November 2010, he lodged a formal complaint with the Public Prosecutor concerning the beatings and his arbitrary detention.[3] However, no investigation into the incidents was conducted. Eight months later, on 22 July 2011, in the absence of any follow-up to his complaint, he lodged another complaint with the President of the Supreme Court in which he requested that a summons to appear before the Court be issued, in accordance with article 106 of the Code of Criminal Procedure.[4] However, the Clerk of the Supreme Court refused to register the complaint on the grounds that the complainant first had to appeal to a lower court. Yet, according to the complainant, the Supreme Court is the court that has the authority to investigate and prosecute an offence imputed to a mayor, a person who, as has been established in case law, is accorded an exemption from jurisdiction under article 138, paragraph 8, of Act No. 1/08 (the Code of Judicial Organization and Jurisdiction) of 17 March 2005. Nevertheless, there was no investigation into the incidents following the complaint.

2.9 Given the inaction of the judicial authorities, on 2 February 2012 the complainant once again applied to the President of the Supreme Court to have his complaint of torture and arbitrary detention formally registered and examined.[5] The Clerk of the Supreme Court, who received his file, nonetheless refused to provide him with a receipt to serve as proof of the formal registration of his complaint, thereby, according to the complainant, violating article 50 of Act No. 1/07 of 25 February 2005 governing the Supreme Court.[6] On 28 March 2012, the complainant once again went to the Supreme Court to enquire if any action had been taken in response to his complaint, but the registrar refused to give him any information. Thus, the complainant maintains, more than 18 months after the events, no investigation has been opened.

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[1] A medical report is attached to the complaint.

[2] Discharge papers that indicate the duration of his hospitalization are attached to the complaint.

[3] A copy is attached to the complaint.

[4] A copy is attached to the complaint.

[5] A copy is attached to the complaint.

[6] Article 50 of that law states that acknowledgements of receipt shall be issued for all requests, applications and memorandums submitted to the clerk of the court.

2.10 The complainant recalls that, in addition to these procedural initiatives, the offences against him were publicly reported in broadcasts of the Radio Publique Africaine (see para. 2.6). Consequently, the Burundian governmental and administrative authorities must certainly have had knowledge of the offences, and this was demonstrated by the visit of the municipal police commissioner of Bujumbura to the radio station the day after the broadcast. The complainant also stresses that the strike by the staff of Prince Regent Charles Hospital drew attention to the abuse to which he was being subjected. He adds that, on 29 October 2010, the newspaper *Iwacu*, which has a very wide readership in the country, published an article about the incident.[7] The article referred to the position of Action by Christians for the Abolition of Torture in Burundi, an organization whose president had called on the judicial authorities to take action in the complainant's case. In the light of these public denunciations, there was no way that the Burundian authorities could have been unaware of the offences committed against the complainant. However, no action was taken to ensure that these grave offences were investigated, that the perpetrators of the acts were prosecuted and punished, or that the complainant received redress.

2.11 The complainant underlines the fact that, under article 392 of the Criminal Code, any judge who refuses to administer justice after having been petitioned to do so faces a prison sentence of from 8 days to 1 month and/or a fine of from 50,000 to 100,000 Burundian francs. He notes, however, that a case brought on the basis of that provision would have no objective chance of success, since in all likelihood the prosecutor would enjoy the same protection as those who had committed the offences. Given his numerous attempts, all in vain, to institute legal proceedings, as well as the obstacles he encountered when attempting to register his complaint with the Supreme Court, the complainant adds that it is clear that both the judicial and the administrative authorities were not, and are still not, willing to prosecute or punish those responsible. Although they had been clearly identified, the mayor of Bujumbura, the commissioner and the police officers who were with them were not inconvenienced in any way. The mayor still holds public office and the police commissioner is still with the police and is currently working in Karuzi.

2.12 Besides the clear refusal of the authorities to determine responsibility in this case, the complainant draws attention to the general climate of impunity in Burundi, particularly with regard to acts of torture, which has been the subject of numerous reports issued by international bodies.[8] He recalls that the Committee has expressed its concern about the ineffectiveness of the State party's judicial system and has encouraged it to "take vigorous measures to eliminate the impunity enjoyed by the perpetrators of acts of torture and ill-treatment, whether they are State officials or non-State actors" and to "conduct timely, impartial and exhaustive inquiries; try the perpetrators of such acts and, if they are found guilty, sentence them to punishment commensurate with the gravity of the acts committed; and provide adequate compensation to the victims".[9] According to the complainant, the failings of the State party's judicial system perpetuate this climate of impunity, and the judiciary's dependence on the executive, a matter raised by the Committee,[10] is a major obstacle to the prompt initiation of impartial investigations when there are substantial grounds to believe that an act of torture has been committed. In conclusion, the complainant states that he cannot be expected to attempt to take legal recourse against the inaction of the judicial authorities, as any such attempt would be doomed to failure. As a consequence, he requests the Committee to conclude that he attempted to invoke the available domestic remedies but that they proved ineffective. Alternatively, he requests the Committee to conclude that the application of the remedies was unreasonably prolonged, since no investigation had been opened 18 months after the events, which had been reported as soon as they had occurred.[11]

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[7] A copy is attached to the complaint.

[8] The complainant refers specifically to the Committee's concluding observations concerning the initial report of Burundi (CAT/C/BDI/CO/1), adopted on 20 November 2006, para. 21.

[9] Ibid., para. 11.

[10] Ibid., para. 12. The complainant also refers to the report of the Independent Expert on the situation of human rights in Burundi (A/HRC/17/50), para. 59.

The complaint

3.1 The complainant claims he was the victim of violations by the State party of article 2, paragraph 1, and articles 11, 12, 13 and 14, read in conjunction with article 1, and, alternatively, with article 16 of the Convention.

3.2 According to the complainant, the abuse to which he was subjected caused him intense pain and suffering and constitutes acts of torture[12] as defined in article 1 of the Convention. He was first slapped twice by the mayor of Bujumbura and then brutally beaten by the municipal police commissioner and the police officers accompanying him. While he was on the ground, the police officers kicked him and hit him with the butts of their rifles all over his body, including his back, which caused bleeding and extreme pain. In the police vehicle in which he was transported, the complainant continued to be hit all over his body, which caused him to lose consciousness. The mayor encouraged his men to continue the beating, even asking them to "finish him off", thereby leaving no doubt as to his intentions. These words were extraordinarily demeaning and led him to believe that he would not survive the beating, thereby causing him extreme mental anguish.

3.3 Again with reference to article 1 of the Convention, the complainant states that he was also denied the right to see a physician on the first day of his detention; that he was left handcuffed for 32 hours; and that he was in hospital for one month and four days following the abuse and again for a month in April 2011 in order to undergo surgery on his left leg. In his view, these facts demonstrate the intensity of his pain and suffering, which required several months of medical treatment.

3.4 The complainant adds that this suffering was inflicted on him deliberately. The mayor's orders and the relentlessness by his henchmen clearly demonstrate that this was a deliberate act intended to inflict severe pain. The complainant also draws attention to the wilful refusal to provide him with any treatment during his first hours of detention, as well as his arbitrary detention for four days, which in his view was intended as punishment for having questioned the mayor of Bujumbura about payment of a security deposit for the medical treatment of the two injured men brought to the emergency room. The beating he received was also intended to intimidate him and to make him stop asking questions about the deposit. The complainant adds that he was not placed under arrest and that the police were at no time attempting to arrest him. He was taken to the premises of the criminal investigation police purely because people had started to gather around him and were thus unwelcome witnesses. Consequently, it cannot be concluded that the violence was inflicted with any legitimate objective. Furthermore, the use of force was disproportionate, given that the complainant was under the control of a police commissioner and about a dozen men, was beaten while he was on the ground and was totally helpless. Lastly, the complainant notes that there is no doubt about the fact that the perpetrators of the violence against him are public officials (the mayor, the police commissioner and the officers of the criminal investigation police).

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[11] The complainant refers to communication No. 8/1991, *Halimi-Nedzibi v. Austria*, decision adopted on 18 November 1993, para. 6.2.

[12] The complainant refers to communication No. 207/2002, *Dimitrijevic v. Serbia and Montenegro*, decision adopted on 24 November 2004, para. 5.3.

3.5 The complainant also invokes article 2, paragraph 1, of the Convention, under which the State party should have taken "effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction". However, although there is no statute of limitations under Burundian law for genocide, crimes against humanity or war crimes, when the offence of torture is committed outside those particular contexts it is subject to a statutory limitation of from 20 or 30 years, depending on the circumstances.[13] Furthermore, the measures the Committee recommends that States parties should take to prevent torture and ill-treatment of persons deprived of their liberty — such as maintaining an official register of detainees, upholding the right to receive independent legal assistance and independent medical assistance without delay and to contact relatives, and making judicial remedies available that such persons may use to challenge the legality of their detention or treatment — were not taken in the complainant's case. [14] The complainant adds that his is not an isolated incident and that serious human rights violations by police officers largely go unpunished in Burundi. Having failed to adopt legislative or other necessary measures to prevent torture, the State party has, according to the complainant, failed to meet its obligations under article 2, paragraph 1, of the Convention.

3.6 The complainant also invokes article 11 of the Convention, noting that the State party failed to meet its obligations concerning the custody and treatment of persons subjected to any form of arrest, detention or imprisonment. His detention was unlawful. He was not informed of the charges against him, did not have access to legal counsel and was not brought before a judge at any time during his detention. As it was materially impossible for him to assert his rights through legal channels, he was unable to challenge his detention or lodge a formal complaint concerning the torture to which he had been subjected. Furthermore, he was not examined by a physician, despite the critical condition he was in upon his arrival at the premises of the criminal investigation police. Consequently, the complainant concludes that the State party failed in its duty to duly monitor the way in which he was treated during his detention at the premises of the criminal investigation police.[15]

3.7 The complainant also maintains that article 12 of the Convention, under which the competent authorities are to proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed, has been violated by the State party in his case.[16] He recalls that it is not necessary, for the purposes of article 12, for a formal complaint to have been lodged. In the case in question, he recalls that a news report about his case was broadcast on the radio. Given the radio station's large number of listeners, there is no doubt that the Burundian authorities had heard about the broadcast, as is confirmed by the visit of the police commissioner, one of those responsible for the events, to the radio station. The complainant also draws attention to the strike by the staff of Prince Regent Charles Hospital in support of their colleague. Thus, in addition to the formal complaint lodged with the Public Prosecutor on 5 November 2010, the authorities had been fully informed of the torture to which the complainant was subjected and were consequently under an obligation to investigate these incidents on their own initiative. However, an effective, in-depth and impartial investigation was never conducted. No investigative procedures were carried out, nor were the complainant or the alleged perpetrators brought in for questioning, although they had been identified. The complainant therefore concludes that, as a prompt and impartial investigation was not carried out into the allegations of torture of which he was a victim, the State party acted in violation of its obligations under article 12 of the Convention.

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[13] Article 146 of the Criminal Code.

[14] Committee's general comment No. 2, *Official Records of the General Assembly, Sixty-third Session, Supplement No. 44* (A/63/44), annex VI, para. 13.

[15] The complainant recalls that, in its concluding observations concerning the State party's initial report, the Committee expressed concern at the "lack of systematic and effective monitoring of all places of detention, notably through regular unannounced visits by national inspectors and a mechanism for legislative and judicial monitoring" (CAT/C/BDI/CO/1, para. 19). In his initial complaint, he also notes that the State party has not ratified the Optional Protocol to the Convention, which provides for the establishment of a national mechanism for the prevention of torture. [Later, on 18 October 2013, the State party acceded to the Optional Protocol.]

[16] The complainant refers to communication No. 341/2008, *Sahli v. Algeria*, decision adopted on 3 June 2011, para. 9.6; communication No. 187/2001, *Thabti v. Tunisia*, decision adopted on 14 November 2003, para. 10.4; communication No. 60/1996, *M'Barek v. Tunisia*, decision adopted on 10 November 1999, para. 11.7; and communication No. 59/1996, *Blanco Abad v. Spain*, decision adopted on 14 May 1998, para. 8.2.

3.8 With respect to article 13 of the Convention, the complainant maintains that the State party was obligated to guarantee his right to file a complaint with the authorities and to have his case promptly and impartially examined. He points out that, in the case in question, he lodged a formal complaint with the Public Prosecutor on 5 November 2010, and with the President of the Supreme Court on 22 July 2011 and again on 2 February 2012, with no results. He recalls that the Committee has stressed the importance of prompt investigations and has found that delays of 15 months, 10 months, 2 months and even 3 weeks are excessive with regard to the requirement to conduct prompt investigations.[17] In the case in question, 18 months after the events, no investigation has been conducted. Consequently, he maintains that the State party has acted in violation of article 13 of the Convention.

3.9 The complainant also invokes article 14 of the Convention. He states that, by depriving him of due process, the State party has also deprived him of the enforceable right to compensation for torture. Furthermore, given the inaction of the judicial authorities, other remedies to obtain redress, through a civil suit for damages, for example, have no realistic prospect of success. The Burundian authorities have taken few measures to compensate victims of torture, a point raised by the Committee in its concluding observations concerning the State party's initial report in 2007.[18] The complainant adds that he is still suffering the physical and psychological consequences of the beating he received (see para. 2.7) and that he has never benefited from any form of rehabilitation designed to ensure that he recovers as fully as possible in physical, mental, social and financial terms. He recalls the State party's obligation to ensure that redress is obtained, including, but not limited to, the provision of compensation for the harm suffered and the adoption of measures to ensure non-repetition, particularly through the imposition of penalties on the perpetrators commensurate with the severity of their acts. This involves, first of all, opening an investigation and prosecuting those responsible.[19] The crime committed against the complainant remains unpunished, as his torturers have not been convicted, prosecuted, investigated or troubled in any way at all, which is a violation of his right to redress under article 14 of the Convention.

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[17] The complainant refers to *Halimi-Nedzibi v. Austria*, para. 13.5; *M'Barek v. Tunisia*, para. 11.7; and *Blanco Abad v. Spain*, para. 8.4.

[18] CAT/C/BDI/CO/1, para. 23.

[19] The complainant refers among other things to communication No. 212/2002, *Urra Guridi v. Spain*, decision adopted on 17 May 2005, para. 6.8. He adds that these views are in line with the jurisprudence of the Human Rights Committee (communication No. 563/1993, *Bautista de Arellana v. Colombia*, Views adopted on 23 October 1995, para. 8.2; communication No. 778/1997, *Coronel et al. v. Colombia*, Views adopted on 24 October 2002, para. 6.2) and the European Court of Human Rights (*Assenov v. Bulgaria*, 28 October 1998, para. 102 and 117, *Recueil des arrêts et décisions* 1998-VIII; *Aksoy v. Turkey*, 18 December 1996, para. 90, *Recueil des arrêts et décisions* 1996-VI).

3.10 The complainant reiterates that the violence inflicted upon him constituted torture as defined in article 1 of the Convention. However, alternatively, even if the Committee were not to characterize it as such, the abuse suffered by the victim in any case constitutes cruel, inhuman or degrading treatment and, accordingly, the State party is obligated, under article 16 of the Convention, to prevent public officials from committing, instigating or tolerating such acts and for punishing them if they do. Furthermore, the complainant recalls the conditions in which he was held during the four days of his arbitrary detention in the jail of the criminal investigation police (see para. 2.4) and refers to the Committee's concluding observations concerning the State party's initial report, in which it noted that conditions of detention in Burundi "amount to inhuman and degrading treatment".[20] He recalls that he did not receive medical treatment immediately, despite being in a critical condition, and that the treatment he finally did receive was inadequate in view of his condition. Lastly, he recalls that he was handcuffed for 32 hours. In conclusion, the complainant contends, alternatively, that he was the victim of a violation of article 16 of the Convention. He also maintains that the conditions of detention to which he was exposed amount to a violation of article 16 of the Convention.

State party's failure to cooperate

4. On 13 December 2012, 8 May 2013 and 9 October 2013, the State party was invited to submit its comments on the admissibility and the merits of the communication. The Committee notes that no information has been received in this connection. It regrets the State party's refusal to communicate any information on the admissibility and/or merits of the complainant's claims. The Committee recalls that the State party is obligated, pursuant to the Convention, to submit written explanations or statements to the Committee in order to clarify the matter and indicate the steps, if any, that the State party may have taken to remedy the situation. In the absence of a response from the State party, due weight must be given to the complainant's allegations, which have been properly substantiated.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 As required under article 22, paragraph 5 (a), of the Convention, the Committee has ascertained that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement.

5.2 The Committee recalls with concern that, despite the three reminders sent to it, the State party has not provided any observations. The Committee therefore finds that it is not precluded from considering the communication under article 22, paragraph 5 (b), of the Convention. The Committee finds no reason not to consider the communication admissible and thus proceeds to its consideration of the merits of the claims submitted by the complainant under articles 2 (para. 1), 11, 12, 13, 14 and 16 of the Convention.

Consideration of the merits

6.1 The Committee has considered the complaint in the light of all the information made available to it by the parties in accordance with article 22, paragraph 4, of the Convention. As the State party has not provided any observations on the merits, due weight must be given to the complainant's allegations.

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[20] CAT/C/BDI/CO/1, para. 17.

6.2 The Committee notes that, according to the complainant, on the night of 17 October 2010, the mayor of Bujumbura, the municipal police commissioner of Bujumbura and 11 national police officers arrived at Prince Regent Charles Hospital, where the complainant was working. During the subsequent altercation, the mayor and the police officers struck him repeatedly, leaving him bleeding and in severe pain. Referring to the victim, the mayor ordered his men to "finish off this drug addict". The complainant was then handcuffed, put into a vehicle and beaten until he lost consciousness on the way to the jail of the criminal investigation police. The Committee has taken note of the complainant's allegations that the blows he received caused extreme pain and mental suffering and were deliberately inflicted by agents of the State with the objective of punishing and intimidating him. In the absence of any refutation by the State party, the Committee concludes that due weight must be given to the complainant's allegations and that the events in question, as described by the complainant, constitute acts of torture within the meaning of article 1 of the Convention.

6.3 The complainant also invokes article 2, paragraph 1, of the Convention, under which the State party is enjoined to "effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction". The Committee observes, in the case in question, that the complainant was beaten, then detained without being allowed to contact his family or being given access to legal or medical assistance. The Committee recalls its concluding observations concerning the State party's initial report, in which it called on the State party to take legislative, administrative and judicial measures to prevent torture and ill-treatment and to take steps, as a matter of urgency, to bring all places of detention under judicial control and to prevent its officials from making arbitrary arrests and from engaging in torture.[21] The apparent lack of any mechanism to provide oversight of the criminal investigation police jail where he was held without doubt exposed him to an increased risk of being subjected to torture and deprived him of any possible remedy. The Committee consequently finds a violation of article 2, paragraph 1, read in conjunction with article 1 of the Convention.[22]

6.4 With regard to articles 12 and 13 of the Convention, the Committee has taken note of the complainant's claims that, on 17 October 2010, he was beaten and detained by police officers who were accompanying the mayor of Bujumbura and was held without legal justification until 20 October 2010. He lodged formal complaints with the Public Prosecutor on 5 November 2010, and with the President of the Supreme Court on 22 July 2011 and 2 February 2012, with no result. Although the perpetrators were clearly identified, the State party has still not conducted any investigation four years after the incidents in question. The Committee considers that so long a delay in initiating an investigation into allegations of torture is patently unjustified and clearly breaches the State party's obligations under article 12 of the Convention, which requires it to proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed. By failing to meet this obligation, the State party has also failed to fulfil its responsibility under article 13 of the Convention to guarantee the right of the complainant to lodge a complaint, which presupposes that the authorities provide a satisfactory response to such a complaint by launching a prompt and impartial investigation.[23]

6.5 Regarding the complainant's allegations under article 14 of the Convention, the Committee recalls that this provision not only recognizes the right to fair and adequate compensation, but also requires States parties to ensure that the victim of an act of torture obtains redress. The Committee refers to its general comment No. 3 (2012), in which it establishes that States parties should ensure that victims of torture or ill-treatment obtain full and effective redress and reparation, including compensation and the means for as full a rehabilitation as possible.[24] Redress should cover all the harm suffered by the victim and encompass, among other measures, restitution, compensation and guarantees of non-repetition of the violations, taking into account the circumstances of the individual case.[25] In the case in question, the Committee has noted the complainant's allegation that he was admitted to hospital twice in connection with the abuse to which he was subjected and that he is still suffering from the after-effects (see para. 2.7), but that he has not benefited from any form of redress. In the absence of a prompt and impartial investigation, despite clear material evidence that the complainant was the victim of acts of torture which have gone unpunished, the Committee concludes that the State party has also failed to fulfil its obligations under article 14 of the Convention.

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[21] CAT/C/BDI/CO/1, para. 10.

[22] See communication No. 376/2009, *Bendib v. Algeria*, decision adopted on 8 November 2013, para. 6.4.

[23] Ibid., para. 6.6.

6.6 Regarding the complaint under article 16, the Committee has taken note of the complainant's claim that he was detained from 17 to 20 October 2010 in the premises of the criminal investigation police in a cramped room shared with some 40 other detainees; that he was kept handcuffed for 32 hours; that he was given no food; and that he was denied access to a physician on the first day of his detention, despite his request and his worrisome condition. The Committee has also taken note of the complainant's argument that he was not informed of the charges against him, he did not have access to legal counsel and that he was not brought before a judge at any time during his detention. The Committee concludes that the facts disclose a violation by the State party of its obligations under article 16, read in conjunction with article 11 of the Convention.

7. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of the view that the facts before it disclose violations of articles 1, 2 (para. 1), 12, 13, 14 and 16, read in conjunction with article 11, of the Convention.

8. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee urges the State party to conduct an impartial investigation into the events in question for the purpose of prosecuting those allegedly responsible for the victim's treatment and to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in conformity with the above views, including adequate and fair compensation encompassing the means for as full rehabilitation as possible.

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[24] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 44* (A/68/44), annex X, para. 5.

[25] See *Hammouche v. Algeria*, para. 6.7 and *Hanafi v. Algeria*, para. 9.7.

Communication No. 525/2012: *R.A.Y. v. Morocco*

Submitted by:	R.A.Y. (represented by counsel, Mr. Yves Levano and Mr. Philippe Ohayon)
Alleged victim:	R.A.Y.
State party:	Morocco
Date of complaint:	25 October 2012 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 16 May 2014,

Having concluded its consideration of complaint No. 525/2012, submitted on behalf of R.A.Y. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is R.A.Y., born on 1 February 1990, holding dual French and Algerian nationality and ordinarily resident in France. He claims to be a victim of a violation of article 15 of the Convention by the Moroccan authorities, which authorized his extradition to Algeria in a case involving drug trafficking and money-laundering.[1] He adds that, if he was indeed extradited to Algeria, he would also be a victim of a violation of article 3 of the Convention. The complainant is represented by two lawyers, Mr. Yves Levano and Mr. Philippe Ohayon.

1.2 On 31 October 2012, the Committee, through its Special Rapporteur on new communications and interim measures, asked the State party not to extradite the complainant to Algeria while his complaint was under consideration by the Committee. The Committee's request was reiterated to the State party on 15 November 2012 and on 15 May 2013, at the complainant's request, because of allegations that the complainant was going to be extradited despite the protection measures granted.

The facts as presented by the complainant

2.1 On 25 January 2012, the investigating judge from Sidi M'Hamed Court (Algeria) issued international arrest warrant No. 09/19 P against the complainant for attempted export of narcotic drugs, sale of prohibited goods as part of an organized group and money-laundering. The complainant was also summoned by the investigating judge in Nantes (France) under an international request for judicial assistance issued by the same Algerian judge. In the course of the preliminary investigation opened following the discovery, on 4 April 2009, of 5,492.6 kilos of narcotic drugs in three refrigerated containers destined for the port of Antwerp (Belgium), a person arrested by the Algerian authorities, A.B., implicated the complainant and his brother in the drug trafficking with which he was charged.

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[1] The extradition was not carried out after the Committee obtained interim measures; the complainant is still being detained on remand in Morocco.

2.2 On 10 February 2012, the complainant appeared before the French investigating judge who, on behalf of the Algerian investigating judge, first notified him of the grounds for charging him in the Algerian proceedings, then took his statement and, lastly, notified him that he had two months to submit additional comments and to advise whether or not he agreed to travel to Algeria for questioning by the Algerian examining magistrate. He was also informed that, if no response was received from him within the two-month period granted by the Algerian judicial authority, he would be deemed a fugitive.[2]

2.3 On 26 February 2012, the complainant was arrested in Morocco under an Interpol international search warrant.[3] An extradition request was then transmitted by the Algerian authorities to the Moroccan Government. The complainant argued before the Moroccan court that his extradition to Algeria would expose him to a risk of torture and endanger his life in violation of article 3 of the Convention against Torture.[4]

2.4 In a judgement dated 25 April 2012, the Court of Cassation issued a favourable opinion on the handing over of the complainant to the Algerian judicial authorities. On 23 July 2012, the complainant filed an application for revocation of this favourable opinion with the Court of Cassation. On 14 September 2012, the extradition order was signed by the competent authorities.[5] On 25 October 2012, the complainant submitted his case to the Committee against Torture. On 25 November 2012, the Court of Cassation rejected his application for revocation on the merits and upheld its opinion in favour of extradition.

2.5 The complainant has been held in custody since 26 February 2012. His continued detention since this date is intrinsically linked to the ongoing process before the Committee.

The complaint

3.1 The complainant states that he is a victim of a violation of article 15 of the Convention by the State party, since the latter allegedly considered confessions obtained under torture as evidence in authorizing his extradition. The complainant adds that, if he was indeed extradited to Algeria, he would also be a victim of a violation of article 3 of the Convention.

3.2 In support of his allegations of violations, the complainant first refers to the general risk of torture associated with the systematic human rights violations in Algeria, as noted by the Committee, which has stated that it is concerned at the many serious allegations which it has received of cases of torture and abuse inflicted on detainees by law enforcement officers.[6] The complainant also cites the concluding observations of the Human Rights

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[2] According to the record of the hearing, he was also notified that he was subject to a court supervision order (a prohibition on leaving his region of residence (Loire-Atlantique), except for professional reasons) and that he would have to request permission from the court to leave France to comply with the summons from the Algerian authorities.

[3] In his arguments before the Court of Cassation, the complainant contended that he had gone to visit a relative in Agadir and that he was not a fugitive, since the two-month period had not yet expired; he did not mention the court supervision order to which he was subject.

[4] During these same proceedings, the complainant stated, somewhat inconsistently, "that his intention was not to evade the judicial authorities of his country of origin, but that he hoped to appear before those authorities as a free man, rather than being taken there in handcuffs and shackles".

[5] Namely the Minister of Justice and the Head of Government (Prime Minister).

[6] Concluding observations of the Committee against Torture concerning the third periodic report of Algeria, adopted on 13 May 2008 (CAT/C/DZA/CO/3), para. 10.

Committee, in which the Committee notes with concern information regarding cases of torture and cruel, inhuman or degrading treatment in Algeria, for which the Intelligence and Security Department reportedly has responsibility. In its concluding observations, the Human Rights Committee also indicates that it is concerned that confessions obtained under torture are not explicitly prohibited and excluded as evidence under the State party's legislation.[7]

3.3 The complainant then refers to a general problem with extradition procedures in the State party. He cites the Committee against Torture, which has expressed concern at the fact that the State party's existing extradition and refoulement procedures and practices may put some persons at risk of torture. The Committee has also indicated that, in order to determine the applicability of the obligations that it has assumed under article 3 of the Convention, the State party should thoroughly examine the merits of each individual case, including the overall situation with regard to torture in the country concerned.[8]

3.4 More specifically, the complainant argues that the accusation against him of involvement in drug trafficking is based solely on the statements of a person arrested in connection with this criminal case, A.B., which were allegedly obtained under torture. He states that, apart from these statements, there is no evidence to implicate him in this international drug trafficking. He recalls the Committee's jurisprudence whereby, in accordance with article 15, each State party must ensure that any statements invoked as evidence in an extradition procedure have not been made as a result of torture.[9]

3.5 The complainant recalls that he raised before the State party's Court of Cassation his fear of being subjected to torture if extradited to Algeria, but he believes that the court failed to consider the risks involved properly, merely noting that, as Algeria was a party to the Convention against Torture, there was no reason to fear any risk of torture.[10]

3.6 According to the complainant, domestic remedies have indeed been exhausted, as the application for revocation filed on 23 July 2012, which was still pending when this complaint was lodged with the Committee, is a remedy existing only in civil law and would be considered marginally applicable by the Court of Cassation in a criminal case. Furthermore, the complainant considers that the application for revocation does not have suspensive effect. In this regard, the complainant stresses that the law is silent on the issue and that the extradition order was signed by the State party's competent authorities while the application for revocation was in progress.

3.7 The complainant adds that there is no remedy in Moroccan law against the extradition order, which is an administrative act, notification of which he reportedly received during the week of 22 October 2012, while his extradition was scheduled for 15 November 2012. He maintains that the Moroccan judges are competent only to ensure that the legal requirements for extradition are met in accordance with the Moroccan Code of Criminal Procedure.

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[7] Concluding observations of the Human Rights Committee concerning the third periodic report of Algeria, adopted on 1 November 2007 (CCPR/C/DZA/CO/3), paras. 15 and 19.

[8] Concluding observations of the Committee against Torture concerning the fourth periodic report of Morocco, adopted on 17 November 2011 (CAT/C/MAR/CO/4), para. 9.

[9] The complainant cites the Committee's jurisprudence. See communication No. 193/2001, *P.E. v. France*, decision adopted on 21 November 2002, and communication No. 419/2010, *Ktiti v. Morocco*, decision adopted on 26 May 2011.

[10] The complainant did not raise before the Court of Cassation the fact that the incriminating statements used as evidence in the extradition procedure had allegedly been obtained under torture (alleged violation of article 15). Instead, he argued that "the allegations against him are simply accusations by persons who harbour hatred towards him and his family".

State party's observations on admissibility and on the merits

4.1 The State party contests the admissibility of the complaint on grounds of the complainant's failure to exhaust domestic remedies against the decision to extradite him to Algeria. The State party recalls that the extradition procedure has two parts: one judicial, the other administrative.

4.2 The judicial proceedings were conducted before the Court of Cassation, which issued a favourable opinion on the complainant's extradition in its decision of 25 April 2012, the Court having taken the view that the complainant's fears of being tortured by the Algerian authorities were unfounded. On 23 July 2012, the complainant filed an application for revocation of the Court of Cassation's favourable opinion. On 25 November 2012, the court handed down its decision, in which it found the application admissible but rejected it on the merits, standing by its original reasons for the opinion in favour of extradition.[11] The State party explains that, contrary to the complainant's assertions, an application for revocation is explicitly provided for in criminal cases[12] and, as such, has suspensive effect. The State party notes that the Court of Cassation has issued numerous judgements on the matter and that it has revoked several of its extradition rulings.[13] The State party concludes that the complaint lodged with the Committee was "premature" and failed to comply with the requirement to exhaust domestic remedies.

4.3 The State party emphasizes that the second part of the extradition procedure is administrative in nature. Specifically, it consists of the decision taken by decree by the Head of Government (Prime Minister), who must decide on the Algerian State's extradition request, taking into account the opinion issued by the Court of Cassation and relevant legislation. In this case, the decree ordering the complainant's extradition was signed on 14 September 2012, on the basis of the Court of Cassation's favourable opinion issued on 25 April 2012, articles 718 et seq. of the Code of Criminal Procedure and the 1963 Bilateral Agreement on Judicial Cooperation between Morocco and Algeria. The complainant's extradition was originally scheduled for 15 November 2012 but was not carried out due to the interim measures granted by the Committee.

4.4 The State party further emphasizes that the complainant did not lodge an appeal with the administrative chamber of the Court of Cassation against the Head of Government's decision. It adds that the complainant's argument to the effect that there are no remedies against the extradition order because it is an administrative act is incorrect. Provision is made in the Code of Administrative Courts[14] for applications to set aside regulatory or individual decisions of the Head of Government on grounds of abuse of power. Moreover, there is significant practice in the area of appeals lodged with the administrative chamber of the Supreme Court (currently Court of Cassation) against decisions taken by the Prime Minister (currently Head of Government). The Head of Government's decree accepting the Algerian State's extradition request was effectively a "personal regulatory decision", an administrative act subject to appeal before the administrative chamber of the Court of Cassation within 60 days of the date of notification of the decision. The State party explains that the complainant had ample opportunity to submit such an appeal between the notification of the extradition date and 15 November 2012.

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[11] The complaint before the Committee was lodged on 25 October 2012, i.e. one month before the Court of Cassation's decision.

[12] Articles 536 et seq. of the Code of Criminal Procedure in force since 2 October 2002.

[13] Jurisprudence cited: Supreme Court judgement of 16 December 1997 in case 2204/97 (published in Supreme Court Bulletin No. 4.1999) and judgement 1143/1 of 26 July 2006 in case 4089 (unpublished) – Decisions not provided.

[14] Dahir No. 1.91-225 of 10 September 1993, enacting Act No. 41-90 on the creation of administrative courts, art. 9.

4.5 The State party also contests the merits of the complaint with respect to the complainant's allegations concerning possible ill-treatment in Algeria, the complainant's country of origin. In this connection, it recalls the Committee's general comment No. 1 (1996), on the implementation of article 3 of the Convention in the context of article 22,[15] which states that the risk of torture must be foreseeable, real and personal. The State party notes that these requirements have not been met in this case, the complainant himself having explicitly stated during his first appearance before the French judge that he agreed to travel to Algeria within two months as he had done nothing wrong. During this hearing, while accompanied by his lawyer, the complainant neither expressed fear of the Algerian justice system, nor mentioned any risk of torture.[16] The State party considers that the statements made by the complainant before the French judge contradict those made before the public prosecutor in Tangiers on the day of his arrest, since it was only at that point that he mentioned the risk of torture. The State party therefore questions the credibility of the complainant's allegations and considers them to be unfounded. While the complainant criticizes the State party for failing to consider his allegations, the State party notes, on the other hand, that the Court of Cassation's judgement is clearly reasoned on this point and is based mainly on the complainant's own statements before the French judge.

4.6 Lastly, the State party emphasizes that the complainant has failed to provide any evidence that the incriminating statements used in the extradition procedure were made under torture. It notes in this regard that his alleged accomplices, already in the hands of the Algerian justice system, were all assisted by their lawyers and did not claim to have been ill-treated during their arrest or interrogation. The defendant A.B., who implicated the complainant, had three of his lawyers with him during his appearance before the investigating judge, and there is no mention of torture during his interrogation in the case documents transmitted to the State party.

The complainant's comments on the State party's observations

5.1 With regard to the issue of exhaustion of domestic remedies, the complainant maintains in his comments of 31 December 2013 that the application for revocation has no suspensive effect on the extradition decision. He claims that, according to the State party's legislation, the application for revocation is an "extraordinary" remedy and only "ordinary" remedies automatically have suspensive effect.[17] He concludes that, unless otherwise expressly provided in law, it cannot be presumed that an application for revocation has suspensive effect. Consequently, this remedy did not provide sufficient guarantee of the suspension of the contested extradition order and did not prevent the complaint from being lodged with the Committee while the application was in progress.

5.2 The complainant reiterates that there is no remedy against the Head of Government's decision ordering extradition. In his view, the Head of Government's decree is simply a decision implementing the Court of Cassation's judgement and, as such, is non-appealable, not a decision establishing rights or a constitutive act. The complainant alleges that he was not notified of the decree in question, even though all administrative acts must be communicated to the persons concerned to ensure their access to remedies, which proves that it was not an administrative act.

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[15] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44), annex IX.

[16] The State party cites the record of the hearing, in which at no time is it noted that either the complainant or his lawyer expressed any fear about a risk of torture by the Algerian authorities.

[17] He is citing article 597 of the Code of Criminal Procedure, which states that implementation takes place, at the request of the public prosecutor, when the decision is no longer subject to an *ordinary* remedy or appeal in cassation in the interests of the parties.

5.3 On the merits of the case, the complainant reiterates his arguments on the risk of torture *in abstracto* in the general Algerian context. He goes on to refer to statements describing acts of violence committed by the Algerian police, which he calls acts of torture, against witnesses or accused persons during the judicial proceedings in this case. Two such statements, made anonymously, were apparently collected by the complainant's sister, although most of the persons contacted by her reportedly refused to speak for fear of reprisals. The complainant explains that this reflects the climate of fear and the *omertà* (code of silence) surrounding the ongoing Algerian judicial proceedings. A third person, Y.B., allegedly told the complainant's sister that he had been deprived of water and food for 48 hours in custody and had been subjected to police pressure.

5.4 The complainant contends that he runs a real, present and personal risk, since it would appear that in this case, as indicated in the statements collected by his sister, the Algerian police has routinely used violence during the interrogations. He further contends that the Algerian investigators seem particularly interested in him because they are allegedly trying to implicate him along with his brother. He claims that he is therefore very likely to be subjected to violence during his interrogation to force him to provide information on his brother, who is wanted by the Algerian authorities.

5.5 Lastly, the complainant repeats his arguments concerning the State party's failure to fulfil its obligation to ascertain whether the complainant would be at risk of being tortured if extradited to Algeria and to ensure that the incriminating statements were not obtained under torture. In this connection, the complainant adds that the two persons who testified anonymously to his sister were reportedly subjected to violence in order to force them to implicate him. There is thus a "high probability" that the statements of A.B. were made under torture.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any complaint contained in a communication, the Committee against Torture must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement.

6.2 In accordance with article 22, paragraph 5 (b), of the Convention, the Committee must ascertain that the complainant has exhausted all available domestic remedies; this rule does not apply where it has been established that the application of those remedies has been unreasonably prolonged, or that it is unlikely to bring effective relief to the alleged victim.

6.3 The Committee notes that, in the State party's view, the communication is inadmissible under article 22, paragraph 5 (b), of the Convention. The suspensive effect of the application filed by the complainant on 23 July 2012 for revocation of the favourable opinion issued on 25 April 2012 by the Court of Cassation is disputed by the two parties. The Committee notes that, as stated by the complainant, the extradition order was signed by the Head of Government on 14 September 2012 while the application was in progress. The Court's decision to reject the application was handed down on 25 November 2012. Given the silence of Moroccan legislation on this matter and the fact that the State party has failed to provide any specific example of jurisprudence clarifying the suspensive nature of the application, the Committee is unable to conclude that the application for revocation prevented the complainant from submitting to the Committee a complaint that was, at most, premature.

6.4 With regard to the lack of remedies against the extradition order reported by the State party, the Committee notes that the parties' views differ on the exact nature of the related decree and therefore the availability of remedies against it. The Committee notes that, according to the complainant, the extradition order is not an administrative act but simply an act implementing a court decision, which does not establish rights and is therefore not subject to appeal. On the other hand, the State party explains that it is an administrative act, against which an application for setting aside on grounds of abuse of power can be filed with the administrative chamber of the Court of Cassation, in accordance with the provisions of the administrative law to which the State party refers.[18]

6.5 The Committee notes that, pursuant to the State party's legislation, an application for setting aside the extradition order on grounds of abuse of power does indeed seem possible. Nevertheless, it notes that, in his comments of 31 December 2013, the complainant denies having been officially notified of the decree ordering his extradition, signed on 14 September 2012, although his counsel had previously mentioned that the complainant had received a copy of the decree during the month of October 2012. The Committee further notes that the State party has not proved that the complainant was officially notified of the extradition order, which would have given him a formal opportunity to appeal within the two-month deadline.[19] The Committee refers to its jurisprudence and recalls that, pursuant to the principle of exhaustion of domestic remedies, the complainant was only required to use remedies that were directly related to the risk of being subjected to torture in Algeria.[20] The Committee notes that the State party has not specified the exact scope of the application to set aside the extradition order on grounds of abuse of power, or how it might influence the complainant's extradition to Algeria, as the State party has not indicated whether the application has suspensive effect. On the other hand, regarding the alleged violation of article 15 of the Convention by the State party, the Committee notes that the complainant did not raise the complaint before the competent authorities, in particular the Court of Cassation,[21] because on that occasion, the complainant stated that the confessions had been made by "persons who harbour hatred towards him and his family". The Committee therefore finds that article 22, paragraph 5 (b), of the Convention does not preclude it from declaring the communication admissible in respect of the alleged violation of article 3, but that the alleged violation of article 15 is not admissible, as it was not raised before the State party's courts.

6.6 In the light of the above considerations, the Committee decides that the communication is admissible, as far as it raises issues under article 3 of the Convention, and decides to proceed with its examination on the merits.

Consideration of the merits

7.1 The Committee has considered the communication in the light of all the information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention.

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[18] Dahir No. 1.91-225 of 10 September 1993, enacting Act No. 41-90 on the creation of administrative courts, art. 9.

[19] Neither the complainant nor the State party has submitted a copy of the extradition order.

[20] See communication No. 170/2000, *A.R. v. Sweden*, para. 7.1, decision dated 23 November 2001, and communication No. 428/2010, *Kalinichenko v. Morocco*, para. 14.3, decision dated 25 November 2011.

[21] See the complainant's defence statement before the Court of Cassation, dated 10 April 2012.

7.2 The Committee must determine whether the extradition of the complainant to Algeria would violate the State party's obligations under article 3, paragraph 1, of the Convention not to expel or return (*refouler*) a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. The Committee recalls that the existence in a country of gross, flagrant or mass violations of human rights is not in itself a sufficient ground for believing that an individual would be subjected to torture.[22] Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that an individual might not be subjected to torture.

7.3 Recalling its general comment No. 1, the Committee reaffirms that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being "highly probable", but it must be personal, present, foreseeable and real.

7.4 The Committee also notes that, according to the complainant, the Court of Cassation failed to consider the risk of torture faced by the complainant properly, merely noting that, as Algeria was a party to the Convention against Torture, there was no reason to fear any risk of torture. The Committee observes that, for his part, the complainant merely stated before the Court of Cassation that he feared being subjected to torture in Algeria, without substantiating the allegation, and yet, as noted by the State party, he had not made any such claims during his appearance before the French investigating judge. The Committee recalls that, in assessing the risk of torture to which an individual would be exposed in the context of extradition or deportation proceedings, a State cannot base itself solely on the fact that another State is a party to the Convention against Torture, or that it has provided diplomatic assurances.[23] The Committee observes that, in the event, the State party authorities did not possess any evidence allowing them to carry out a more accurate assessment of the vague, general and unsubstantiated allegation of risk of torture made by the complainant.

7.5 The Committee notes that the complainant subsequently attempted to prove that he faces a foreseeable, real and personal risk of torture on the basis of anonymous statements collected by his sister. The Committee recalls its jurisprudence whereby the risk of torture must be assessed on grounds that go beyond mere theory, and indicates that it is generally for the complainant to present an arguable case.[24] On the basis of all the information submitted by the complainant, including on the general situation in Algeria, the Committee considers that the complainant has not provided sufficient evidence to enable it to conclude that his extradition to Algeria would expose him to a foreseeable, real and personal risk of torture within the meaning of article 3 of the Convention.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, therefore concludes that the complainant's extradition to Algeria does not constitute a breach of article 3 of the Convention.

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[22] See *Kalinichenko v. Morocco*, para. 15.3.

[23] See *Kalinichenko v. Morocco*, para. 15.6, and communication No. 327/2007, *Boily v. Canada*, paras. 14.4 and 14.5, Views adopted on 14 November 2011.

[24] See communication No. 298/2006, *C.A.R.M. et al. v. Canada*, para. 8.10, decision adopted on 18 May 2007; No. 256/2004, *M.Z. v. Sweden*, para. 9.3, decision adopted on 12 May 2006; No. 214/2002, *M.A.K. v. Germany*, para. 13.5, decision adopted on 12 May 2004; No. 150/1999, *S.L.* v. *Sweden*, para. 6.3, decision adopted on 11 May 2001; and No. 347/2008, *N.B.-M. v. Switzerland*, para. 9.9, decision adopted on 14 November 2011.